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IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 203394 OF 2023 (GM-CC)

BETWEEN:

PRABHU
S/O BHAMALA CHAVAN
AGE 53 YEARS
OCC: AGRICULTURIST, SOCIAL SERVICE
MEMBER OF LEGISLATIVE ASSEMBLY
R/O GHAMSUBAI TANDA, BONTHI
TALUK: AURAD DISTRICT BIDAR-585326.

...PETITIONER

(BY SRI. AMEET KUMAR DESHPANDE SR. COUNSEL FOR
SRI. GANESH S. KALBURGI., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF REVENUE
VIDHANA SOUDHA, BENGALURU-01.
2. COMMISSIONER AND APPELLATE AUTHORITY
SOCIAL WELFARE DEPARTMENT
5TH FLOOR, M.S BUILDING
DR B R AMBEDKAR VIDHI
BENGALURU-560001
3. THE DEPUTY COMMISSINER-CUM-CHAIRMAN
DISTRICT CASTE VERIFICATION COMMITTEE
BIDAR DISTRICT
BIDAR-585401.
4. THE ADDL. DIRECTOR GENERAL OF POLICE
(CIVIL RIGHTS ENFORCEMENT DIRECTORATE)
PALACE ROAD, BENGALURU-560001.





5. THE DISTRICT CASTE VERIFICATION COMMITTEE
BIDAR DISTRICT
BIDAR-585401
REPRESENTED BY ITS MEMBER SECRETARY
6. THE ASSISTANT COMMISSIONER
BIDAR-585401
7. THE TAHSILDAR
BIDAR-585401.
8. THE REVENUE INSPECTOR
DHABKA REVENUE CIRCLE
AURAD-B DISTRICT
BIDAR-585426.
9. SRI. NARASING
S/O THUKARMA
AGED ABOUT 67 YEARS
R/O HOUSE NO.1/124
HALAHALLI VILLAGE
KAMALNAGAR TALUK
BIDAR DISTRICT-585417

... RESPONDENTS

(BY SRI. C. JAGADISH., ADVOCATE FOR
SRI. ADITYA NARAYAN &
SRI. RAVI B. PATIL., ADVOCATES FOR C/R9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE OF ENQUIRY DATED 22.11.2023 ISSUED BY RESPONDENT NO.2 IN FILE NO. SKNI/MI.JA.KO-3/DAAVE-11/2023-24, THE COPY OF WHICH IS AT ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 01.10.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ



CAV ORDER

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The Petitioner is before this Court seeking for the following reliefs:

- i. Quash the notice of enquiry dated 22.11.2023 issued by respondent no.2 in the file No. SKNI/MI.JA.KO-3/DAAVE-11/2023-24, the copy of which is at Annexure-A;*
- ii. Issue any other appropriate writ, order or direction as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case, in the interest of justice.*

2. The petitioner is aggrieved by a notice of enquiry dated 22.11.2023 issued by respondent No.2-Commissioner and Appellate Authority, Social Welfare Department directing the petitioner to appear before respondent No.3-Deputy Commissioner-cum-Chairman, District Caste Verification Committee (for short hereinafter referred to as "DCVC") with regard to an appeal filed by respondent No.9 challenging the earlier order of the District Caste Verification Committee, Bidar-respondent No.5.



3. The petitioner is a Member of Legislative Assembly from 'Aurad' Constituency in Bidar District being reserved for Schedule Caste Category. The petitioner claiming to belong to the "Lambani" caste which is a 'Schedule Caste' has been elected in the year 2008, 2013, 2018 and 2023. The candidature of the petitioner was based on the certificate issued by the jurisdictional Tahsildar at the first instance on 02.05.2008 and the second instance on 04.02.2013. When the petitioner got elected for second time in the year 2013, the Additional Director General of Police (Directorate of Civil Rights Enforcement-DCRE)-respondent No.4 on the complaint of one Sri.Shankarrao Doddi had directed an enquiry by the District Caste Verification Committee (DCVC) with regard to the validity of the caste certificate issued in favour of the petitioner.
4. The DCVC after due verification and enquiry passed an order on 20.11.2017 holding that the petitioner is a resident of State of Karnataka and that he belongs



to the 'Lambani' caste. Sri.Shankarrao Doddi challenged the same by filing a writ petition in WP No.58264/2017 which came to be dismissed on 06.03.2018 holding that the petitioner has an alternative efficacious remedy under Section 4D (i) of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) Act, 1990 (for short hereinafter referred to as '**Act of 1990**').

5. Sri. Shankarrao Doddi had filed an appeal before Respondent No.2 in appeal No.01/2018-19 but however withdrew the same on 07.05.2018. Though respondent No.2 had permitted the withdrawal, respondent No.2 had directed respondent No.3 to examine the caste certificate issued to the petitioner by a separate letter dated 07.05.2008 issued to respondent No.3.
6. Which apparently has not been done since on 19.12.2020 respondent No.2 withdrew the letter addressed to respondent No.3 on the ground that



there is no provision for issuance of such letter for re-examining the issue.

7. Subsequently, one Mr. Ravindraswamy had filed a Revision under Section 4F of the Act of 1990 before respondent No.3-the DCVC which came to be rejected on the ground that the same stood concluded by the earlier order of the DCVC dated 20.11.2017. A writ petition came to be filed by Sri.Ravindra Swamy in WP No.225917/2020. In the said writ petition, Sri.Ravindra Swamy had also challenged the order dated 20.11.2017 passed by the DCVC.
8. One Sri.Vijaykumar had filed another Revision Petition in file No.C&V CR/98/2016-17 before the Deputy Commissioner-cum-Chairman, DCVC-Respondent No.3. The said Sri.Vijaykumar had also filed a Writ Petition in WP No.226907/2020 seeking a direction to Respondent No.3 i.e., the Chairman of the DCVC to decide the Revision filed by him within



time. In both the above writ petitions, the petitioner was arrayed as a respondent.

9. A Co-ordinate Bench of this Court vide order dated 01.02.2022 allowed the writ petition filed by Sri.Vijaykumar and directed the respondent-Authorities to conduct fresh enquiry, with regard to the caste certificate issued in favour of the petitioner.
10. The petitioner challenged the same in WA No.200031/2022 and WA No.200032/2022. The Division Bench vide judgment dated 13.01.2023, allowed both the appeals and dismissed both the writ petitions by imposing cost. The said judgment in the writ appeals were challenged before the Hon'ble Apex Court in SLP (C) No.7747/2023, which came to be dismissed on 01.05.2023.
11. Subsequent to the disposal of all the above, Respondent No.9 preferred an appeal under Section 4D of the Act of 1990 before the Commissioner and Appellate Authority- Respondent No.2, challenging the order dated 20.11.2017 passed by the DCVC.



The Respondent No. 2-Commisisoner and Appellate authority issued notice of enquiry to the petitioner, it is challenging the same the petitioner is before this Court seeking for aforesaid reliefs.

Submissions on behalf of the Petitioner:

12. Sri. Ameet Kumar Deshpande., learned Senior counsel appearing for the petitioner, would submit that;

12.1. The notice issued by Respondent No.2 is wholly without jurisdiction and as such, this Court can exercise jurisdiction in the present matter to quash the same and though a notice has been challenged, the same would not preclude this Court from excising the jurisdiction.

12.2. The petitioner has faced enquiry and/or proceedings on three earlier occasions, and having succeeded in all of them, Respondent No.9 could not have filed another appeal before Respondent No.2, on which basis Respondent No.2 has issued the present impugned notice.



In this regard, he relies upon Section 4D of the Act of 1990, which reads as under;

4D. Appeal.- (1) Any person aggrieved by an order passed by the Verification Committee under section 4C may, within thirty days from the date of receipt of the order appeal,-

(i) to the Commissioner / Director, Social Welfare in case the verification certificate relates to a person belonging to the Scheduled Castes;

(ii) to the Director, Tribal Welfare in case the verification certificate relates to a person belonging to the Scheduled Tribes;

(iii) to the Director, Backward classes Department, in case the verification certificate relates to a person belonging to other Backward Classes;

in such form and in such manner and on payment of such fee as may be prescribed.

(2) The Appellate Authority shall after giving to both the parties an opportunity of being heard pass such order in appeal as it deems fit.

12.3. By relying on the said provision, he submits that an appeal, if any, by any person aggrieved by an order passed by the Verification Committee under Section 4C has to be filed within 30 days from the date of receipt of the order. The order having been passed way back on 20.11.2017, no proceedings could have



been initiated by Respondent No.9, termed as an appeal challenging the order dated 20.11.2017.

12.4. Respondent No.9 can neither be considered to be an aggrieved party, nor can he maintain an appeal over an order as regards which he was not a party.

12.5. The very same order dated 20.11.2017 having been challenged by Sri.Shankarrao Daddi, who was a complainant in the earlier proceedings by filing an appeal and the appeal having been withdrawn by him, the entire proceedings came to an end. Hence, there is no question of any other person, including Respondent No.9 preferring another appeal challenging the very same order.

12.6. Respondent No.2, having disposed the earlier appeal as withdrawn having become 'Functus Officio' could not entertain any other appeal as regard the very same subject matter, he having



been rendered 'Functus Officio' not having any jurisdiction in the matter.

12.7. Respondent No.2 ought to have dismissed the appeal *in limine* on account of it being barred by the law of limitation. The appeal had been filed after lapse of more than six years, when it was required to be filed within a period of 30 days from the order. There being no application filed for condonation of delay, such a delay not capable of being condoned, respondent No.2 instead of dismissing, the appellate authority has issued notice which is wholly without jurisdiction and amounts to harassment of the petitioner. The petitioner being forced to defend multiple proceedings for no fault of his.

12.8. The matter has attained finality inasmuch as in the Writ Petition filed by Sri.Ravindraswamy in WP No.225917/2020, where the order of the DCVC was quashed by the learned single judge, the Writ Appeal filed



came to be allowed on 1.2.2022, thereby dismissing the Writ Petition. Therefore, his submission is that the caste certificate and the order dated 20.11.2017 passed by the DCVC stood merged with the order dated 13.1.2023 passed in WA No.200031/2022 and WA No.200032/2022. Hence, the question of Respondent No.9, filing an appeal challenging the order dated 20.11.2017, which had merged with the order of the Division Bench of this Court dated 13.1.2023 in WA No.200031/2022 would not arise.

12.9. Respondent No.2 would be deciding over a matter which has already been decided by a Division Bench of this Court in the aforesaid WA No.200031/2022, which is not permissible.

12.10. He relies upon the decision of the Hon'ble Apex Court in ***SLP(C) No.7747 of 2023***, which is reproduced hereunder for easy reference:



No case for interference under Article 136 of the Constitution of India is made out. The Special Leave Petition is dismissed. Pending applications, if any, also stand disposed of.

12.11. By relying on the same, he submits that as regards the very same caste certificate, the Hon'ble Apex Court has categorically held that the order of the DCVC cannot be meddled with at the sweet will of the disgruntled party after a gap of several years. The said decision, he submits applies on all fours to the present matter also.

12.12. Respondent No.2 was also a party in the Writ Appeal, he is aware of the orders passed by the Division Bench. Despite which the impugned notice has been issued to the petitioner after a lapse of nearly six years at the instance of respondent No.9 without application of mind.

12.13. He supports the earlier decision of the DCVC dated 20.11.2017, by contending that the said order was passed after conducting necessary



enquiry, considering all the relevant records like birth certificate, resident certificate, voters list, family background etc., the factual finding of the DCVC after due enquiry cannot be interfered with or set aside on the basis of a fresh enquiry now proposed on the basis of a fresh complaint filed by Respondent No. 9. The matter having been settled by the various orders which have been passed, the question of reopening the same at the instance of Respondent No.9 would not arise.

12.14. He lays emphasis on the petitioner being a Member of Legislative Assembly for four consecutive terms and submits that the petitioner has been targeted by various persons, one after the other, and the petitioner has been made to suffer one enquiry after the other, when in fact there is no such requirement. The order passed on the complaint of Sri.Shankarrao Doddi having



attained finality, the question of subsequently Sri.Ravindraswamy and Sri.Vijaykumar filing complaints followed now by the complaint of Respondent No.9-Sri.Narasingh, is completely *malafide*.

12.15.As regards the *locus* of Respondent No.9, he submits that merely because Respondent No.9 is a person belonging to Schedule Caste, he would not have any *locus* to file an appeal when he was not a party to the earlier proceedings. The petitioner has been made to suffer enquiry and/or litigation on three earlier occasions which cannot be countenanced in law or fact and as such he submits that this Court ought to intercede in the matter and quash the notice which has been issued.

12.16.The present appeal filed by respondent No.9 is also barred by the principle of res-judicata, inasmuch as the Division Bench of this Court has already adjudicated the issue concerning



the validity of the petitioner's caste certificate in its judgment dated 13.01.2023 passed in WA No.200031/2022 and WA No.200032/2022. By referring to Section 11 of the Civil Procedure Code 1908, it is submitted that when an issue has been directly and substantially in issue in a former suit or proceeding between the same parties or between parties under whom they claim, has been finally decided, it cannot be reopened in a subsequent proceeding/s.

12.17. In this regard, he submits that the petitioner's caste certificate was directly and substantially in issue before the DCVC and subsequently before this Court in Writ Petitions as also Writ Appeals going upto a Special Leave Petition before the Hon'ble Apex Court. In all the proceedings, orders having been passed in favour of the petitioner, the said issue relating to the caste certificate of the petitioner has attained finality by dismissal of the Special



Leave Petition by the Hon'ble Apex Court and as such, the Respondent No.9 cannot seek to re-agitate the issue by filing an appeal before the Respondent No.2.

12.18. When an order is passed on a complaint filed by a third party, the said order having attained finality, no other person can seek to re-agitate or re-open the said issue by re-initiating proceedings and/or filing an appeal. If the same is permitted, it would apart from violating the principles of res-judicata would also result in unnecessary harassment of the petitioner by abusing the process of Court.

12.19. Respondent No.9 also has no *locus* to challenge the order dated 20.11.2017, since he was not a party to the order dated 20.11.2017, all the further appeals filed in relation thereto. Respondent No.9 being a contestant in the elections, if at all he is aggrieved by the petitioner contesting on the basis of the caste



certificate issued. Respondent No.9 is required to raise the same in an Election Petition challenging the election of the petitioner.

12.20. Respondent No.9 cannot seek to reopen a closed matter by filing an appeal under Section 4D of the Act of 1990. The legal forum available for Respondent No.9 is only through an Election Petition under the Representation of the People Act, 1950.

12.21. He relies upon the decision of the Hon'ble Apex Court in ***Union of India vs Vicco Laboratories¹***, more particularly para nos. 30 and 31 thereof, which are reproduced hereunder for easy reference:

30. *At this juncture, it would be necessary to take note of the stand of learned counsel for the appellants that in the packages meant for export different descriptions were given. In this context it is to be noted that in the packing meant for export instead of the word 'Ayurved', the expression 'Herbal' is used. The special permission was taken from the Drugs Control Authority for such use. The letter dated 14.6.1996 of the Government of India, Ministry*

¹ 2007 AIR SCW 7618



of Health & Family Welfare (Department of ISM & H) is relevant. The same reads as follows:

*"New Delhi,
dated 14.6.1996*

*To
The Asstt. Drug Controller (India),
New Custom House, Fort,
Bombay-400038.*

*Sub: Export of Vicco Vajradanti Tooth Paste,
Powder and Turmeric Cream- regarding*

A representation received from the firm in regard to export of the subject products with labeling acceptable to importing countries and the modification made in the labels, which are otherwise used in the country. Having examined the matter, it is opined that there may be no objection in export of subject products labeled as herbal products. This permission is limited to export purpose only.

*Sd/-
Illegible.
(Ashwini Kumar)
For Drug Controller General (I)*

*Copy to:
Shri G.K. Pendharkar,
Vicco Laboratories,
25, Jerbai Wadia Road,
Parel, Bombay -400012"*

31. *Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of*



case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.

12.22. By relying on **Vicco Laboratories case**, he submits that whenever any notice issued would amount to an abuse of the process of law, a writ Court under Article 226 of the Constitution, is empowered to interfere and pass necessary order so as to prevent miscarriage of justice and uphold the Rule of law.

12.23. He relies upon the decision of the Hon'ble Apex Court in **Ayaubkhan Narkhan Pathan vs State of Maharashtra**², more particularly para

² 2012 AIR SCW 6177



nos. 7, 12 and 15 thereof, which are reproduced hereunder are for easy reference:

7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784



12. *This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide:*

P.S.R. Sadhanantham v. Arunachalam & Anr., AIR 1980 SC 856; Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114; State of Uttaranchal v. Balwant Singh Chaufal & Ors., (2010) 3 SCC 402; and Amar Singh v. Union of India & Ors., (2011) 7 SCC 69)

15. *In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.*

Locus standi of respondent no.5

12.24. By relying on **Ayaaubkhan Narkhan Pathan's**

case, he submits that a stranger to the proceedings cannot be said to be an aggrieved



person, more so when he has not suffered any legal injury.

12.25. He relies upon the decision of the Division Bench of this Court in **R.S. Mahadev vs B.R. Gopamma**³, more particularly para nos. 22, 23, 24, 25, 27, 28, 33 and 34 thereof, which are reproduced hereunder for easy reference:

22. The other aspect of the matter is that in Ayaubkhan Noorkhan Pathan vs. State of Maharashtra, [(2013) 4 SCC 465] (Ayaubkhan Noorkhan Pathan), it has been observed that it is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from a legal injury can challenge the act/action/order in a court of law. The relevant discussion on the concept of aggrieved person is at paragraph Nos.9 to 13, which are extracted as under:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be

³ WA No. 1242/2019



a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised.

11. In Anand Sharadchandra Oka v. University of Mumbai, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other person.

*12. In A.Subash Babu vs. State of A.P., this Court held: (SCC pp.628-29, para 25)
"25. The expression 'aggrieved person' enotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific*



circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression "next friend" means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody."

23. *A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or abstain from doing something. Existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under Article 226. For instance, a rival in a trade has no locus standi to challenge the grant of licence to other trader on the ground that the licence was granted illegally or suffers from defect of jurisdiction, vide J.M.Desai vs. Roshan Kumar, [AIR 1976 SC 578], (J.M.Desai); Nagpur Rice and Flour Mills vs. Teekappa Gowda and Brothers, [AIR 1971 SC 246] Nagpur Rice and Flour Mills). In J.M.Desai, provisions of Bombay Cinemas Registration Act, 1953 and the Bombay Cinema Rules, 1954 came up for consideration and paragraphs 36 to 41 of the said judgment read as under:-*

"36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force



of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busy bodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer-zone may not be "persons aggrieved".

38. To distinguish such applicants from 'strangers', among them, some board tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something? Has he a special and substantial



grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

39. Now let us apply these tests to the case in hand. The Act and the Rules to which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, "person aggrieved" must receive a strict construction.

40. Did the appellant have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury? The answer in the circumstances of the case must necessarily be in the negative.

41. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. The appellants did not avail of this option. He did not lodge any objection in response to the notice, the due publication of which was not denied. No explanation has been given as to why he did not prefer any objection to the grant of the No-Objection-Certificate before the District Magistrate or the Government. Even if he had objected before the District Magistrate, and failed, the Act would not give him a right of appeal. Section 8A



of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of a licensing authority refusing to grant a license, or revoking or suspending any license under Section 8. Obviously, the appellant was not a person aggrieved" within the contemplation of Section 8A."(underlining by us)

Thus, a person who is not aggrieved by any discrimination complained of, cannot maintain a writ petition. [D.Nagaraja vs. State of Karnataka, AIR 1977 SC 876] (D.Nagaraja).

24. *That apart, Section 4-B of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Act, 1990, reads as under:-*

*"4-B. Appeal against order under Section 4-A.—
(1) Any person aggrieved by an order of the Tahsildar under Section 4-A may, within thirty days from the date of receipt of the order, prefer an appeal to Assistant Commissioner of the Revenue sub-division.*

(2) The Assistant Commissioner of the Revenue sub-division may after giving both parties an opportunity of being heard pass orders allowing or dismissing the appeal and in appropriate cases directing issue of a caste certificate, or as the case may be, an income and caste certificate to the applicant." On a reading of the same it is evident that the only a person aggrieved by an order of the Tahsildar under Section 4-A with regard to issuance of caste certificate and income certificate, can file a appeal to the Assistant Commissioner of the Revenue sub-division and not otherwise.

25. *The expression "a person aggrieved/aggrieved person/aggrieved" could be further explained with reference to K.J.Iyer's "Judicial Dictionary", 16th Edition (2014), as under:*

- *The word 'aggrieved refers to a substantial*



grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation;

- *A man who has suffered a legal grievance-a man against whom a decision has been pronounced, which has wrongly deprived him of something or wrongfully affected his title. [Re. Sidebotham (1880) 24 Ch D 458].*

- *A person injured or damaged in a legal sense. The question whether a person is 'aggrieved' for the purpose of complaining against another, is to be determined by the nature of injury or offence, and the special circumstance of each case. Any fanciful or sentimental grievance does not suffice; there must be injuria or a legal grievance, that is, such grievance as law can appreciate and not a stat pro ratione voluntas reasons. [3 CrLJ 187].*

- *The expression 'aggrieved person' means a person who has got a legal grievance, i.e., a person is wrongfully deprived of anything of which he is legally entitled and not merely a person who suffered some sort of disappointment. [Gopal Prasad Chourasia vs. Prasanna kumar Shrivastava, (1999) JLI 478 (487) (MP) (DB)].*

- *Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an 'aggrieved person'. [Bar Council of Maharashtra vs. M.V.Dabholkar, AIR 975 SC 2092].*

27. *The appellant herein has not made out a case as to how he was aggrieved by issuance of a caste certificate in favour of respondent No.1. He was not a person who had applied to the post of Kannada Teacher in the Aided Institution, to which respondent No.1 was appointed. He has not been denied any benefit on account of issuance of the caste certificate in favour of respondent No.1, which he had claimed.*



Therefore, the appellant had no right to file a complaint against respondent No.1 herein and he had no locus standi to do so.

28. *Learned counsel for the appellant drew our attention to Circular dated 30.6.2007 issued by the State Government that Circular is contrary to the provision of law, which we have extracted above. As already noted, it is only a person who is aggrieved can file an appeal under Section 4-B of the Act. The Circular cannot be contrary to the provision of the statute. In fact, the said Circular nowhere enables the appellant herein to file a complaint, as the appellant had no locus standi to do so. Merely because, the said Circular enables a person to file a complaint, would not imply that, any person, although does not have the locus standi to do so as he is not an aggrieved person, can file such a complaint. It is only an aggrieved person who is a stakeholder, such as an employer or the person who has been denied a caste certificate or a person who has been denied of a post in Government or public service or a seat in an educational institution on account of a fraudulent caste certificate obtained by another person, who can file such a complaint. Therefore, placing reliance on the aforesaid dictum of the Hon'ble Supreme Court in Ayaubkhan, we hold that the appellant herein had no locus standi to file a complaint against respondent No.1, as he was not a person aggrieved.*

33. *Learned counsel for respondent No.1 placed reliance on Kavita Solunke vs. State of Maharashtra and Others [(2012)8 SCC 430] to contend that, it is only in a case of a false, fabricated caste certificate being obtained or by misrepresentation on fraud, which would disentitle a candidate from getting relief from the Court or when, on the basis of such a fraudulent caste certificate being issued, no benefits could be derived.*

34. *But, in the instant case, there was no falsehood, fabrication, manipulation or*



concealment made by respondent No.1, while being issued the caste certificate in the year 1979. The same was issued to her on the basis of the law prevailing at the relevant point of time, namely the judgment of the Hon'ble Supreme Court in N.E.Horo. Subsequent declaration of law by overruling the N.E.Horo cannot ipso facto result in the caste certificate issued to respondent No.1 herein being fraudulent, illegal or invalid. In this regard, we find considerable force in the submission of the learned counsel for respondent No.1.

12.26. By relying on **R.S. Mahadev 's case**, he submits that the extraordinary jurisdiction in Article 226 can only be exercised when there is a legal injury caused to a person who claims to be aggrieved. There being no legal injury caused to respondent No.9, he could not have filed an appeal.

12.27. He relies upon the decision of the Hon'ble Apex Court in **S.S. Rathore vs State of M.P.**⁴, more particularly para nos. 13 and 14 thereof, which are reproduced hereunder for easy reference:

13. *A three-Judge Bench decision in the case of Somnath Sahu v. State of Orissa [(1969) 3 SCC 384] is an authority in support of the position as accepted by the two Constitution Bench judgments referred to above. There, it was held*

⁴ AIR 1990 SC 10



in the case of a service dispute that the original order merged in the appellate order of the State Government and it is the appellate decision which subsisted and became operative in law and was capable of enforcement. That judgment relied upon another decision of this Court in support of its view being CIT v. Amrit Lal Bhogilal & Co. [AIR 1958 SC 868 : 1959 SCR 713 : (1958) 34 ITR 130].

14. *The distinction adopted in Mohammad Nooh case [AIR 1958 SC 86 : 1958 SCR 595] between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between courts and tribunals in regard to the principle of merger. On the authority of the precedents indicated, it must be held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on 31-8-1966.*

12.28. By relying on **S.S. Rathore's case**, he submits that insofar as the Doctrine of Merger is concerned, there is no distinction which can be drawn between orders of the Courts and that of the order of the Tribunal. Insofar as the present case is concerned, his submission is that the earlier order of the DCVC dated



20.11.2017, got merged with the order of the single judge dated 01.02.2022 which got merged with the order of Division Bench dated 13.01.2023 which subsequently was merged with the order of the Hon'ble Apex Court dated 01.05.2023. Thus, the order of the Hon'ble Apex Court is in pursuance of the earlier order of DCVC dated 20.11.2017. The order of the Apex Court is to be regarded to be a merged order of all the proceedings and now that the Hon'ble Apex Court has decided on the matter, the question of the Respondent No.9 filing one more appeal before Respondent No.2 would not arise.

12.29. He relies upon the decision of the Hon'ble Apex Court in ***Gulabchand Parikh vs State of Bombay***⁵, more particularly para nos. 60 and 61 thereof, which are reproduced hereunder for easy reference:

⁵ AIR 1965 SC 1153



60. *As a result of the above discussion, we are of opinion that the provisions of Section 11 CPC are not exhaustive with respect to an earlier decision operating as res-judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res-judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res-judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial.*

61. *We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under Articles 226 or 32 of the Constitution from operating as res-judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We therefore hold that, on the general principle of res-judicata, the decision of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res-judicata in a subsequent regular suit between the same parties with respect to the same matter.*

12.30. By relying on ***Gulabchand Parikh's case***, he submits that whenever there is a decision rendered by a Court after affording fair opportunity to parties therein, the same would operate as a res-judicata in subsequent



proceedings. In the present case, enough opportunity was granted to the earlier complainants who were heard and reasoned orders were passed and therefore the said orders would amount to res-judicata insofar as the complaint of Respondent No.9 is also concerned.

12.31. He relies upon the decision of this Court in

A. Chandrashekhara vs State of Karnataka⁶,

more particularly para no. 11 (viii) thereof, which is reproduced hereunder for easy reference:

11.viii) Insofar as the contention urged by the petitioners with regard to filing of a review petition in R.P.No.159/2020 and R.P.No.515/2019 against the order of the Division Bench is concerned, the said contention deserves to be rejected for more than one reason; Even according to the petitioners, the said Review petitions are still pending adjudication before this Court and consequently, the question of re-agitating the same issue all over again by way of the present petition does not arise and the petition is not maintainable on this ground alone. Further, as held by the Division Bench of this Court in Sri. J.D. Mosses & Another vs. Smt.Meka Sheshamma & Anoter - Review Petition

⁶WP No.51849 of 2018



No.610/2017 dated 11.06.2019, filing of a review petition before this Court by the very same petitioners after their SLP was rejected by the Apex Court, is nothing but an abuse of process of law and Court as hereunder:-

"25. But, what is more important to note in the instant case is whether there is an abuse of process of this Court and consequently, whether the petitioners are empowered to invoke the review jurisdiction after the Hon'ble Supreme Court has dismissed the special leave petition after hearing the counsel on both sides and therefore, emphasis on judicial propriety and discipline would assume significance. Further, this is also not a case where before the Hon'ble Supreme Court permission was sought for withdrawal of the special leave petition with liberty to file a review petition which we have come across in many cases and on the strength of the liberty granted by the Hon'ble Supreme Court, delay in filing the review petition is condoned by the High Court and the review petitions are entertained and disposed of. But, in the instant case, there is no withdrawal of the special leave petition, on the other hand, the special leave petition is dismissed after hearing the learned counsel on both sides. In fact, in such a circumstance, liberty was not sought to file a review petition and it could not have been sought by the petitioners as they were unsuccessful before the Hon'ble Supreme Court.

26. Further, what is of significance is that the review petition has been filed four years after the dismissal of the regular first appeal by a co-ordinate bench of this Court. It may be that the petitioners herein were prosecuting this special leave petition before the Hon'ble Supreme Court. The Judges who passed the judgment in the regular first appeal have since retired on attaining the age of superannuation and after the dismissal of special leave petition, a second innings, so to say, is sought by the petitioners in filing this review petition. In our view, this is



a clear case of abuse of the process of law and of this Court and a clear case of ignoring the Supreme Court order dismissing the special leave petition and venturing to file this review petition, which is wholly speculative in nature. We are afraid that in the instant case, we cannot entertain the review petition owing to judicial discipline and propriety and the glaring facts in the instant case. If our non-entertaining of the review petition is to be construed as an error, then we would say that we may have erred on the side of caution and on being mindful of the judicial discipline and propriety, as highlighted by the learned counsel for the respondents and also the judgment of the Hon'ble Supreme Court on the issue under consideration, particularly the observations in Abbai Maligai Partnership Firm which have not been held to be contrary to law in any subsequent judgments of the Hon'ble Supreme Court.

27. Even though the Hon'ble Supreme Court has in Khoday Distilleries Limited permitted the review petition to be heard by this Court, the same are based on the peculiar facts that obtained in the said case which we have referred to. This is not to say that the judgment of the Hon'ble Supreme Court in Khoday Distilleries Limited is based purely on the facts of the said case. In fact, it is an order passed on a reference to consider as to whether there were conflicting opinions expressed in judgments of the Hon'ble Supreme Court subsequent to Abbai Maligai Partnership Firm or Kunhayammed. While, considering the said issue, the three Judge Bench in Khoday Distilleries Limited has not over-ruled the judgment in Abbai Maligai Partnership Firm but has observed that it was decided on its own peculiar facts. But, we find that the facts which obtained in Abbai Maligai Partnership Firm are replicated in the instant case, inasmuch as in the said case also after the dismissal of the special leave petition after hearing both sides, the review petitions were filed challenging the



judgment passed by the High Court after four years and thus, there is a delay of 1051 days in filing the review petitions after the dismissal of the regular first appeal. In Abbai Maligai Partnership Firm, the delay was condoned and the order passed by the High Court was reviewed and reversed and thereafter, the appellants therein filed special leave petition challenging the order passed in the review petition. While allowing the said special leave petition, the Hon'ble Supreme Court made the observations deprecating the manner in which the review petitions were filed and heard by the High Court after the dismissal of the special leave petitions, and the respondents therein were directed to pay costs to the appellants therein.

28. We find that the peculiar facts which arise in Abbai Maligai Partnership Firm exactly arise in the instant case also inasmuch as the review petition filed herein is after the dismissal of the special leave petition by the Hon'ble Supreme Court on 24/04/2017. It may be that, in Khoday Distilleries Limited the Hon'ble Supreme Court permitted the review petition to be entertained by this Court by setting aside the order passed by this Court dismissing the review petition as not maintainable, but we are more mindful and conscious of the observations in the nature of strictures passed by the Hon'ble Supreme Court in paragraph No.4 of Abbai Maligai Partnership Firm. The said strictures are serious and it implies that once the Supreme Court dismisses a special leave petition, no review petition could be entertained thereafter by the High Court.

29. In Union of India & Another Vs. Raghubir Singh (Dead) by LRs. etc., [(1989) 2 SCC 754], (Raghubir Singh) a Constitution Bench of the Hon'ble Supreme Court has observed that India is governed by a judicial system identified by a hierarchy of courts, where doctrine of binding precedent is a cardinal feature of its jurisprudence. Unlike in the United Kingdom, in



India, we have a written Constitution which represents the supreme law of the land and the Judiciary sits in judgment not only on the implementation of the law by the Executive, but also on the validity of the Legislation made by the Parliament or the State Legislature which is sought to be implemented. That the Supreme Court as the highest court in the entire judicial system, the law declared by it by Article 141 of the Constitution is binding on all courts within the territory of India. That the decisions of the Supreme Court are of significance not merely because they constitute adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so, they embody a declaration of law operating as a binding principle in future cases. More significantly, an order of the Supreme Court passed after hearing the counsel for the respective parties is binding on the parties. Such an order cannot be interfered with by any inferior court, unless leave has been granted to any party to do so expressly. In our view, such a thing cannot be permitted merely because the special leave petition is dismissed. If review petitions are filed and entertained after dismissal of a special leave petition after hearing both sides, it would result in a situation of there being no finality in the matter.

30. Finality in judgments of courts is a salutary principle of law. The Hon'ble supreme Court in Union of India vs. S.P. Sharma, [(2014) 6 SCC 351, para 90], has held that an issue of law can be overruled later on, but a question of fact cannot be re-opened once it has been finally sealed in proceedings inter se between the parties. That the doctrine of finality has to be applied in a strict legal sense. Re-opening of concluded judgments of the Court would not only tantamount to merely an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle



great oppression might result under the colour and pretence of law inasmuch as there would be no end to litigation. Further, in Rupa Ashok Hurra vs. Ashok Hurra, [(2002) 4 SCC 388, para 40], it has been observed that the principle of finality is insisted upon not on the ground that a judgment given by the Apex Court is impeccable but on the maxim interest reipublicae ut sit finis litium.

31. Further, the judgment in K.Rajamouli is by a two judge Bench which has followed the observations in Abbai Maligai Partnership Firm, but in Gangadhar Palo, which is also a decision by a two Judge Bench strength, has not appreciated the observations made in Abbai Maligai Partnership Firm. Similarly, in Kunhayammed, which is also a decision of three Hon'ble Judges, has also not over-ruled the judgment in Abbai Maligai Partnership Firm.

*32. In fact, in paragraph No.26.3 of Khoday Distilleries Limited a reference has been made to paragraph No.37 of Kunhayammed's case which we have extracted above but we are more conscious and are bound by what is stated in paragraph No.26 in Kunhayammed's case which is an extract of paragraph No.4 of Abbai Maligai Partnership Firm. When the said position of law has been affirmed by a three Judge Bench in Kunhayammed and when Kunhayammed has been affirmed in Khoday Distilleries Limited, in our view, this review petition, which is filed after the dismissal of special leave petition, after hearing the counsel on both sides, by the Hon'ble Supreme Court affirming the judgment of this Court in the regular first appeal, is not maintainable. In the circumstances, we dismiss the review petition as not maintainable. Consequently, all pending applications stand dismissed.
No costs."*



12.32. By relying on **A. Chandrashekhar's case**, he submits that even filing of a Review Petition after the dismissal of a Special Leave Petition has been held to be an abuse of the process of Court/law, the filing of the appeal after the dismissal of the SLP would amount to gross abuse of the process of Court/law.

12.33. He relies upon the decision of Hon'ble Apex Court in **Owners and parties interested in MV 'Vali Pero' ETC vs Fernando Lopez**⁷ more particularly para nos. 6 and 7 thereof, which are reproduced hereunder for easy reference:

6. *We shall first dispose of the preliminary objection of Shri Ramamurthi. He has very fairly stated that he does not challenge the maintainability of these petitions but only assails their entertainability under Article 136. In our considered opinion pragmatism and assurance of shortening this unduly protracted litigation are by themselves sufficient and eloquent reasons to grant leave in these matters and to decide the above question on merits forthwith instead of deferring that decision to a later date. Technically, Shri Ramamurthi is right that ordinarily special leave need not be granted*

⁷ AIR 1989 SC 2206



where a remedy of a statutory appeal being available has not been exhausted. However, in the particular facts of this case when the decision in letters patent appeal appears to be a forgone conclusion, the appropriate course which commends itself to us is to grant leave and decide the matter straightway instead of deferring that decision to a later stage after exhaustion of the futile remedy of letters patent appeal in the High Court.

7. We may at this stage also mention the argument based on res-judicata addressed to us. The point raised is : whether the decision by a Division Bench of the High Court affirming the learned Single Judge's order excluding the depositions from evidence will bar a fresh adjudication of that point in the letters patent appeal filed against the final decision in the suit? In our opinion, this academic exercise is unnecessary in the present case since it cannot be doubted that irrespective of the question of res-judicata, earlier decision on the same point by a Division Bench of the High Court will at least be a binding precedent when the matter is reagitated before the Division Bench hearing the appeal against the final decision in the suit. In such a situation directing the resort to the remedy of an appeal under the Letters Patent against the final decision in the suit will needlessly delay decision of the point by this Court. We are, therefore, of the opinion that, in the present case, it is neither necessary to decide the question of res-judicata argued before us nor would it be appropriate to refuse leave and direct the petitioner to first exhaust the remedy of an appeal under the Letters Patent in the High Court. We, accordingly, proceed to decide the point involved on merits.

12.34. By relying on **Fernando Lopez's case**, he

submits that merely because the petitioner

could reply to the show cause notice and/or



merely because there is an alternative remedy, this Court ought not to refuse to entertain the writ petition. Since the exercise of replying to the show cause notice, consideration of the matter and passing necessary orders by Respondent No.2 would be an exercise in futility, more so when it is the judgment of the Hon'ble Apex Court confirming the judgment of the Division Bench of this Court, which would be required to be applied.

12.35. He relies upon the decision of the Hon'ble Apex Court in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai***⁸, more particularly paras 15, 16, 17, 18, 19, 20 & 21 thereof, which are reproduced hereunder for easy reference;

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an

⁸ (1998) 8 SCC 1



effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmed v. Municipal Board, Kairana [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566]* laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, *K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207 : (1954) 25 ITR 167]* which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in *State of U.P. v. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595]* as under:

"But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."



18. *This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhvani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:*

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

19. *Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:*

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."



20. *Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

21. *That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".*

12.36. By relying on ***Whirlpool Corporation's case***,

he submits that this Court can intercede even as regards a show-cause notice, if such show-cause notice has been issued without jurisdiction or the same amounts to an abuse of the process of law.

12.37. On the basis of all the above, he submits that the above petition is required to be allowed and the reliefs sought for granted.

13. The submission of Sri.C.Jagdish., learned counsel appearing for Respondents No.1 to 8 are;



13.1. There was an earlier complaint received from Sri.Shankarrao Doddi that the petitioner is a permanent resident of Maharashtra and he belongs to the Lambani community which is notified as a denotified tribe in the State of Maharashtra. Thus, the petitioner not being a member belonging to Scheduled Tribe in Maharashtra, he cannot claim to be a person belonging to Scheduled Caste or Scheduled Tribe in the State of Karnataka.

13.2. By suppressing the fact of the petitioner being born in Maharashtra and/or that his Tribe has been denotified, he has obtained a caste certificate as "Lambani" within the State of Karnataka showing himself to have been born within the State of Karnataka.

13.3. Once earlier, a detailed enquiry had been carried out by the Additional Director General of Police (DRCE), and a detailed enquiry report had been submitted to the DCVC. The DCVC,



after conducting an enquiry passed an order in favour of the petitioner, Sri.Shankarrao Doddi had challenged the same in a writ petition in WP No.58264/2017, which came to be dismissed, reserving liberty to Sri.Shankarrao Doddi to approach the Appellate Authority under Section 4D of the Act of 1990.

13.4. An appeal having been filed, the petitioner had challenged the said appeal by filing WP No.201341/2018, which came to be disposed on 20.4.2018 by this Court holding that any contention that the petitioner may have as regards the maintainability of the said appeal or not was required to be raised before the Appellate Authority who was required to consider the same. Thus, he submits that this order dated 20.4.2018 passed in WP No.201341/2018 has been suppressed in the present proceedings.



13.5. This Court having directed the Appellate Authority to decide the matter, there is no decision which has been rendered by the Appellate Authority. Instead, though counsel for Sri.Shankarrao Doddi had addressed arguments, on the next date, instead of pursuing the matter, he withdrew the appeal which came to be allowed by imposing a cost of Rs.1,00,000/-.

13.6. The submission of Sri.C. Jagdish is that the petitioner has prevailed upon Sri.Shankarrao Doddi to withdraw the appeal. Withdrawal of the appeal would not amount to res-judicata, there is no order on merits which can be said to have been passed on account of withdrawal of the appeal.

13.7. The order dated 20.11.2017 has never stood the rigor of an appeal and no orders on merits has been passed on an appeal filed by Sri.Shankarrao Doddi, as such there cannot be



said to be a cause for invoking the principles of res-judicata.

13.8. Insofar as the proceedings filed by Sri.Ravindraswamy and Sri.Vijaykumar, he submits that those proceedings were under Section 4F invoking the revision powers and not under Section 4D which are the appellate powers. The Division Bench of this Court holding that a Revision is not maintainable would not come in the way of the appeal being considered on merits, the Appeal being maintainable.

13.9. As regards the *locus standi*, he submits that respondent No.9 belongs to Schedule Caste who had also contested the elections for the 'Aurad' Constituency in Bidar District. He being unsuccessful on account of the petitioner contesting in the said election by using a false Schedule Caste Certificate, respondent No.9 would be an aggrieved party within the



meaning of Section 4D of the Act of 1990. It is for the petitioner to appear before respondent No.2 and establish his case as per Sub-section (5) of Section 4 of the Act of 1990. Since there is no particular finding which has been rendered by any Court as regards the validity or otherwise of the caste certificate of the petitioner and it is in that background he submits that this Court ought not to intercede at this stage but ought to relegate the petitioner to the proceedings before the Appellate Authority under Section 4D of the Act of 1990.

13.10. He relies upon the decision rendered by this Court in ***Vageesh B. vs The Deputy Commissioner***⁹ more particularly para nos. 11 and 12 thereof, which are reproduced hereunder for easy reference:

⁹ WP No.8087/2023



11. *Insofar as the judgment of the Division Bench in the case of **R.S.MAHADEV** (supra) is concerned, the said judgment would also be inapplicable to the facts of the case, as the Division Bench was considering a case where the complainant was a busybody and not a person aggrieved. The facts therein were that the person who had secured caste certificate did not belong to Scheduled Caste by birth, but by marriage to a Scheduled Caste she was given the caste certificate. The question was a person belonging to other community could be given a caste certificate on marriage .That was challenged by the complainant four years after the retirement of the beneficiary. The Division Bench clearly holds that the complaint therein had no locus to challenge the caste certificate issued to the beneficiary therein. Therefore, both the judgments relied on by the learned senior counsel for the petitioner – one in the case of **MS. M.N. KALAVATHI** and the other in the case of **AYAAUBKHAN NOORKHAN PATHAN**, would become inapplicable to the facts of the case, qua the solitary submission i.e., the locus of the complainant.*

12. *In the light of the aforesaid judgment not becoming applicable to the facts of the case on hand, as the complainant in the case on hand does belong to a Scheduled Caste, the writ petition challenging a show cause notice is unentertainable. Therefore, it is for the petitioner to appear before the Deputy Commissioner as is directed and produce all such documents that are needed to advance his case in the revision petition. None of the observations made in the course of this order will either influence or bind the proceedings before the Deputy Commissioner.*



13.11. By relying on **Vageesh B's case** which in turn relied upon **Mahadev's case**, he submits if a complainant were to belong to Schedule Caste, he would have *locus*, which is the case in respect of Respondent No.9.

13.12. Insofar as the Doctrine of Merger is concerned he submits that the appeal filed by Sri.Shankarrao Doddi having been withdrawn, which withdrawal was permitted by imposing cost of Rs.1,00,000/-. The order passed by the DCVC was not on merits decided by the Appellate Authority, the withdrawal of the appeal by Sri.Shankarrao Doddi would not amount to an order being passed on merit. Hence, the Doctrine of Merger would not apply. His submission is that the Doctrine of Merger would apply only if there are orders passed on merits and not otherwise.

13.13. He refers to paragraph 32 of the order passed in the writ appeal filed by Sri.Vijayakumar and



Sri. Ravindra Swamy in WA No.200332/2022 and submits that even the Division Bench in that case has held that the remedy is for filing an appeal under Section 4D and that a Revision under Section 4F was not maintainable. Thus, the Division Bench having left open the remedy under Section 4D, the petitioner not having challenged the same cannot now contend that an appeal under Section 4D is not maintainable in the present case. Paragraph 32 of the order passed in WA No.200332/2022 is reproduced hereunder for easy reference:

32. *At least the finding of this Court in W.P.No.58264/2017 that against the DCVC's order only an appeal under Section 4-D of the Act lies to the Commissioner has become final. Under the aforesaid circumstances, as rightly pointed out by the learned Counsel for Prabhu Chavan the attempt of Ravindra Swamy and Vijay Kumar to Challenge the order of Tahsildar dated 04.02.2013 by filing revision petition amounts to overreaching the order of this Court in W.P.No.58264/2017. Therefore the said revision petitions were not maintainable. Consequently issuance of mandamus to the Deputy Commissioner would serve no purpose.*



13.14. He relies upon the Division Bench judgment of this Court in **Satish Choudappa Honalli vs State of Karnataka**¹⁰ more particularly para nos. 3 and 4 thereof, which are reproduced hereunder for easy reference:

3. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the submission of learned AGA. Wherever a certificate of social status is obtained in violation of law or by playing fraud or is granted by mistake, ordinarily proceedings are permissible under the provisions of the 1990 Act and the Rules promulgated thereunder, subject to all just exceptions. Learned Single Judge keeping this mind has rightly reserved liberty to the Authorities concerned.

4. The submission of learned Senior Advocate appearing for the appellant that once the Validity Certificate is issued, never there can be any enquiry in any circumstance, appears to be too broad proposition of law. One immediate example for faltering such a broad statement is the ground of fraud. The Apex Court in S.P.CHANGALAVARAYA NAIDU vs. JAGANNATH, (1994) 1 SCC 1, has observed that fraud vitiates everything. If a certificate of social status is secured by playing fraud, the same can be rescinded in an appropriate proceeding by the jurisdictional authorities. Therefore, the Validity Certificate cannot be construed as a China Wall that prevents any action being taken.

¹⁰ WA No.587/2023



13.15. By relying on ***Satish Choudappa Honalli's Case***, he submits that a certificate of social status, if secured by playing fraud, it can be rescinded in an appropriate proceeding by the jurisdictional authority, his further submission is that fraud vitiates everything and as such the petitioner cannot be allowed or permitted to continue to retain the benefit of a fraudulent caste certificate.

13.16. As regards repeated inquiry and/or repeated proceedings against the petitioner, he again reiterates that no proceeding has attained finality insofar as the caste certificate of the petitioner is concerned. The appeal under Section 4D having been withdrawn, no finding on merits having been rendered, what is being challenged is the order dated 20.11.2017 which was a subject matter of the appeal, which came to be withdrawn and as such the present appeal filed cannot be said to be a repeated enquiry, at



the most it can be said to be a continuation of the same enquiry.

13.17.As regards res-judicata, he relies upon the decision of the Privy Council in ***Munni Bibi vs Trilokinath***¹¹ and submits that the principle of res-judicata can be invoked when there is a conflict of interest between the parties concerned, the said conflict ought to have been decided in the order.

13.18.Finally, in the present case the conflict being as regards the caste certificate, no final finding has been given in the appeal, the question of the order of withdrawal constituting res-judicata would not arise.

13.19.As regards delay, his submission is that though Section 4D contemplates an appeal to be filed within 30 days, the same would have to be taken into consideration from the date of knowledge of Respondent No.9. Respondent

¹¹ AIR 1931 PC 114



No.9 could not have been aggrieved on the date on which the order dated 20.11.2017 was passed but became aggrieved when the petitioner contested the Assembly Elections against Respondent No.9 in the year 2023 and it is only thereafter that Respondent No.9 has filed the appeal under Section 4D. As such, he submits that it cannot be said that there is any delay in disentitling the grievance of Respondent No.9 from being considered.

13.20. On all the above grounds, he submits that the above petition is required to be dismissed. The petitioner be relegated to reply to the show cause notice issued by Respondent No.2 and for Respondent No.2 to pass necessary orders on merits.

14. Sri.Aditya Narayan., learned counsel appearing for respondent No.9 would submit that;

14.1. Respondent No.9 belongs to the Schedule Caste Community and is a resident of Halhalli



Village, Kamalnagar Taluk, Bidar District. He was an aspirant Member of Legislative Assembly having contested the election to the Aurad-B Constituency, which is reserved for Schedule Caste.

14.2. Though the petitioner is an elected candidate from the same constituency as a Schedule Caste candidate, he is infact not a person belonging to Schedule Caste. The petitioner originally came from Maharashtra State, his grandfather namely Bhimla Chawan and his grandmother namely Tokubai were residents of Tondchir Village, Udgir Taluk, Latur Distrct in Maharashtra State. They were belonging to Lambani (Banjara) Community, which is a De-notified Nomadic Tribe in Maharashtra State under Article 15(4) and 16(4) of the Constitution of India.

14.3. The 'Lambani Caste' is not a Schedule Caste in Maharashtra State, and therefore he is not



entitled to the benefits that other Schedule Castes would be entitled to. On that ground, he submits that the petitioner belongs to the 'Lambani Caste' which is not a Schedule Caste in Maharashtra State, and in fact being a De-notified Tribe, the question of the petitioner claiming to be a person belonging to a Schedule Caste or Tribe would not arise.

- 14.4. On facts, his further submission is that the grandfather of the petitioner the aforesaid Sri.Bhimla Chawan had six children viz., Omla, Mansingh, Munna, Hakku, Lachu and Bamla. The petitioner is the son of aforesaid Bamla, the said Bamla married Motibai of Gumsabai Tanda, Bonti Village, Aurad Taluk, Bidar District and after their marriage they were residing in Maharashtra State. The petitioner, he submits is a 5th son of Bamla and Motibai and was brought up in Togari Village, Udgir Taluk, Latur District, Maharashtra State.



14.5. The petitioner completed his 1st standard to 12th standard at Pratiba Devi Ashrama School situated at Silvani Border Tanda, Deglur Taluk, Nanded District, Maharashtra State. Therefore, not only the petitioner's grandfather, the petitioner's father and the petitioner were born in Maharashtra. The petitioner was a permanent resident of Maharashtra where he completed his Education.

14.6. Petitioner married one Sakkubai of Gumsubai Tanda, Bidar District. They had two children viz., Priyanka and Pratik, who were studying in Thane District of Maharashtra State. Petitioner is a resident of Thane, and as per the Ration Card No.0216469, indicates that the petitioner is a resident of Sriyog Co-operative Society, Flat No.302, Karegaon, Kalava, Thane.

14.7. On the basis of all the above, he submits that the petitioner has obtained a fraudulent Caste Certificate on the basis of the forged and



created documents, and thereby contested and won the elections as an 'MLA' in a reserved Constituency, thereby depriving a deserving person from contesting the said elections and/or winning the same.

14.8. Referring to Sri. Shankarrao Doddi, he submits that the said Sri. Shankarrao Doddi had challenged the Caste Certificate issued to the petitioner by filing a complaint before the Hon'ble Chief Minister, Government of Karnataka, which was referred to the ADGP, C.R.E.Cell Bengaluru, who had in turn conducted a detailed enquiry and submitted a report with a specific observation that the petitioner is a permanent resident of the State of Maharashtra and that a false Caste Certificate was secured by the petitioner by suppressing the true facts.

14.9. The said report has been forwarded to the Deputy Commissioner who in turn referred the



matter for enquiry before the District Caste Verification Committee. The said Committee by referring to a birth certificate issued during the pendency of the enquiry and produced by the petitioner held that the Caste Certificate issued in favour of the petitioner was correct.

14.10. Sri. Shankarrao Doddi had filed a writ petition in WP No.58264/2017, which came to be dismissed reserving liberty to them to prefer an appeal under Section 4D of the Act. An appeal having been filed in Appeal No.CR 01/2018-19. The petitioner had filed writ petition in WP No.201341/2018 challenging the notice issued in the Appellate Proceedings, the writ petition came to be disposed of vide order dated 20.04.2018, reserving liberty to the petitioner to raise all the objections before the Appellate Authority.

14.11. When the matter was taken up before the Appellate Authority, the said Sri.Shankarrao



Doddi sought permission to withdraw the appeal, which was allowed subject to payment of cost of Rs.1 Lakh. His submission is that the petitioner having failed in the writ petition in WP No.58264/2017 challenging the Appeal filed by the said Sri.Shankarrao Doddi , the proceeding before the Appellate Authority has been withdrawn thereafter, the Appeal having been held to be maintainable. There is no finding as such, which has been issued in terms of the report of the C.R.E.Cell and it is for that reason, that the Appellate Authority not being satisfied with the enquiry conducted by DCVC had issued a communication letter 07.05.2018 to constitute a Committee consisting of the Chief Executive Officer, Zilla Panchayat, Deputy Superintendent of Police, C.R.E.Cell, Bidar and Deputy Director, Social Welfare Department, under the Chairmanship of Deputy Commissioner and re-enquire the entire matter.



14.12. Though such a direction has been issued by the Appellate Authority, no action has been taken on the same. The Committee, let alone conduct an enquiry has not started any work and thereafter the letter came to be withdrawn.

14.13. He submits that subsequently, one Sri. Vijayakumar and Sri. Ravindra Swamy, have invoked Section 4F of the Act, seeking for a direction to hold an enquiry against the Caste Certificate of the petitioner. The same, was not acceded to by respondent No.3 and hence, the said Sri. Vijayakumar and Sri. Ravindra Swamy had filed WP No.225917/2020 and WP No.226907/2020 which came to be allowed vide order dated 01.02.2022, setting aside the order of the DCVC, taking into account the submission made by the Special Counsel, that the enquiry as to the residential status of the petitioner was required to be held to arrive at a



conclusion as to whether the petitioner belonged to Schedule Caste or not?

14.14. The matter was remitted to the DCVC to adjudicate afresh. This order came to be challenged by the petitioner, in Writ Appeal in W.A.Nos.200031/2022 and WA No.200032/2022. The Division Bench of this Court observed that an order passed under Section 4C of the Act, can only be challenged under Section 4D. Any order passed under Section 4D would be final. Therefore no revisional jurisdiction could be exercised under Section 4F and as such, set aside the order of the Single Judge.

14.15. His submission now is that, the Writ Appel Court having held that no revision is maintainable, the appeal earlier filed having been withdrawn, the recommendation of enquiry made by the Appellate Authority not having been acted upon, Respondent No.9 had no alternative but



to challenge the earlier order of DCVC by way of an appeal before the Appellate Authority. The said Sri.Shankarrao Doddi having been permitted to withdraw the appeal before the Appellate Authority on cost of Rs.1 Lakh.

14.16. Merely because Sri.Shankarrao Doddi had withdrawn the appeal, the petitioner who is an aggrieved party cannot be deprived of his remedies on technicalities. There is no finality which can be said to have been reached insofar as the appellate remedy is concerned and therefore, the appeal filed by respondent No.9 being proper and correct ought to have been proceeded with to its logical conclusion.

14.17. A notice has been issued by the Appellate Authority in terms of Annexure-A to the Writ Petition on 22.11.2023, the same cannot be challenged in the present proceedings. It is for the petitioner to reply to the said notice and place the necessary documents. The petitioner,



if having a good case on merits, would not have approached this Court and be afraid of an enquiry to be initiated. The fact that the petitioner is objecting to the enquiry would itself indicate that the petitioner has something to hide and he so hiding.

14.18. A notice of enquiry has been issued, this Court ought not to intercede in the matter. The said notice is to be taken to its logical conclusion upon the petitioner replying to the said notice. In this regard he relies upon the decision of the Hon'ble Apex Court in ***Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh***¹², more particularly para nos. 9 and 10 thereof, which are reproduced hereunder for easy reference:

9. *We heard counsel. It is common ground that Quarter No. M/11 (Old) Adityapur, near Jamshedpur, belongs to the Board. According to the Board and the fourth respondent the hire-purchase transaction is still in force, and the ownership of the building has not been finally*

¹² (1996) 1 SCC 327



transferred to the fourth respondent. The first respondent would say that the fourth respondent is the owner having purchased the building from the Board. The 'basic' or fundamental fact is thus in dispute. The third respondent is the competent authority notified by the State Government under the Bihar State Housing Board Act, 1982 to initiate summary proceedings for eviction against sub-letting, unauthorised occupation by any person, of the premises, etc. belonging to the Board. Annexure Ext. P-4, notice, is the one so issued by the third respondent. The appellant and the fourth respondent complained about the forcible or unauthorised occupation by the first respondent of the premises belonging to the Board. The third respondent was competent to initiate the proceedings under the Act if the building still belongs to the Board and the ownership has not vested in the fourth respondent. It may be, that this basic fact is denied by the first respondent when he states that the fourth respondent is the owner having purchased the building from the Board and that he is a tenant under the fourth respondent. The basic facts, on the basis of which the jurisdiction of the third respondent to initiate/continue the proceedings, require investigation and adjudication. If, as pleaded by the appellant and the fourth respondent, the Board is the owner and the fourth respondent is the hirer, it cannot admit of any doubt that the third respondent has jurisdiction to initiate the proceedings as per Annexure Ext. P-4. If that basic fact is denied by the first respondent, that may require investigation of disputed facts and adjudication by the "competent authority" — the third respondent. Without showing cause against Annexure Ext. P-4, notice, the first respondent straightaway filed the writ petition in the High Court and assailed Annexure Ext. P-4 and the eviction proceedings. The averments in this regard, contained in paragraph 13(H) of the special leave petition, are not denied in the detailed counter-affidavit filed by the first respondent in this Court.



10. *We are concerned in this case, with the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a 'nullity' or totally "without jurisdiction" in the traditional sense of that expression — that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.*

14.19. By relying on **Ramesh Kumar Singh's** case, his submission is that a show cause notice issued by a competent statutory authority would necessitate for the party to show cause against the same and take up any objection regarding jurisdiction at that stage itself unless



such a show cause issued is wholly without any authority or is a nullity.

14.20. He relies upon the decision of the Hon'ble Apex Court in ***Union of India v. Kunisetty Satyanarayana***¹³, more particularly para nos. 14, 15 and 16 thereof, which are reproduced hereunder for easy reference:

14. *The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*

15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.*

¹³ (2006) 12 SCC 28



16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.*

14.21. By relying on **Kunisetty's** case his contention is that a show-cause notice does not give rise to any cause of action a mere show-cause notice does not amount to a final order thereby not interfering with the rights of a person and hence the discretionary jurisdiction of this Court under Article 226 should not be exercised as the Petitioner is only a subject matter of a show cause notice issued under statutory powers.

14.22. Insofar as *locus standi* is concerned, he submits that respondent No.9 is aggrieved on account of the petitioner contesting in a reserved constituency for Schedule Caste candidate, if not for the petitioner contesting. His submission is that respondent No.9 would have probably been elected. That apart, his



submission is that respondent No.9 belonging to the Schedule Caste community is aggrieved by the petitioner falsely claiming to belong to the Schedule Caste Community.

14.23. In this regard he relies upon, the decision of the Hon'ble Apex Court in **Bar Council of Maharashtra v. M.V. Dabholkar**¹⁴, more particularly para nos. 27 and 28 thereof, which are reproduced hereunder for easy reference:

27. The words "person aggrieved" are found in several statutes. The meaning of the words "person aggrieved" will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words "person aggrieved" correspond to the requirement of locus standi which arises in relation to judicial remedies.

28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the

¹⁴ (1975) 2 SCC 702



words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

14.24. By relying on **M.V. Dabholkar's** case, he submits that the meaning of the words 'person aggrieved' is of wide import and in the strict sense a person may be regarded as aggrieved if either a legal entitlement is denied or a legal burden is imposed on the party. Neither of the two having affected the petitioner, he cannot be regarded as an aggrieved party by being a



recipient of a show-cause notice and is thus without locus to maintain this petition.

14.25. He relies upon, the decision of the Hon'ble Apex Court in **A. Subash Babu v. State of A.P.**¹⁵, more particularly para no. 25 thereof, which is reproduced hereunder for easy reference:

25. Even otherwise, as explained earlier, the second wife suffers several legal wrongs and/or legal injuries when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a declaration sought is granted by a competent court. The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict the right of filing complaint to the first wife and there is no reason to read the said section in a restricted manner as is suggested by the learned counsel for the appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by the wife living and not by the woman with whom the subsequent marriage takes place during the lifetime of the wife living and which marriage is void by reason of its taking place during the life of such wife. The complaint can also be filed by the person with whom the second marriage takes place which is

¹⁵ (2011) 7 SCC 616



void by reason of its taking place during the life of the first wife.

14.26. By placing reliance on **A. Subash Babu's** case, his submission is that the scope of what constitutes an aggrieved person being an elastic and elusive concept, it is not necessary that only a party suffering an adverse order to a proceeding be regarded as aggrieved, even a third party aggrieved under the elastic nature of the term may pray for necessary relief, Respondent No.9 though not a party before the DCVC, but by being a *bonafide* member of the SC/ST community and a contestant in the Assembly elections to the same constituency, is thus an aggrieved party and the appeal filed by respondent no. 9 is with locus and the show cause notice survives.

14.27. A decision of the Co-ordinate Bench of this Court in **Sri. Vageesh.B Vs. The Deputy**



Commissioner¹⁶, more particularly para nos. 4 and 10 thereof, which are reproduced hereunder for easy reference:

4. The learned senior counsel representing the petitioner would, for the present, urge a solitary contention that the 2nd respondent/complainant has no locus to register a complaint or call in question the caste status of the petitioner. He is neither a rival candidate in any employment or for any benefit or a rival candidate in the elections. That being the case, it is the submission of the learned senior counsel that the very notice issued, pursuant to the complaint, is without jurisdiction.

10. The only issue is, whether the complainant has locus to challenge the caste certificate of the petitioner. The learned senior counsel for the petitioner has placed reliance on the judgment in the case of MS. M.N. KALAVATHI (supra) rendered by this Court. The judgment was plainly following a Division Bench judgment in the case of R.S. MAHADEV v. B.R. GOPAMMA AND OTHERS⁴. The said Division Bench of this Court was following the judgment of the Apex Court in the case of AYAAUBKHAN NOORKHAN PATHAN (supra) on the issue of locus. The Apex Court in the case of AYAAUBKHAN NOOR KHAN PATHAN has elucidated the issue on locus qua the caste certificate. The Apex Court holds that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority that he falls within the category of aggrieved person. Only a person who has suffered or suffers an injury can challenge the action is what is held by the Apex Court. Therefore, it becomes germane to notice the facts. Paragraph 6 of the judgment depicts what was the issue before the Apex Court. The 5th respondent therein was the complainant. The complainant did not belong to

¹⁶ WP No.8087/2023



any reserved category. As a matter of fact, the complainant belonged to general category. Therefore, it was contended that he has no right or locus to challenge the certificate issued to the appellant therein before the Apex Court. It is on this premise, the Apex Court holds that the complainant therein had no locus to call in question a caste certificate issued to some other W.A.No.1242 of 2019 dated 03-06-2021 caste, unless he belongs to the said reserved category. Paragraph 6 of the said judgment reads as follows:

"6. Shri A.V. Savant, learned Senior Counsel, appearing for the appellant has submitted that Respondent 5 does not belong to any reserved category, in fact, he belongs to the general category and hence, he has no right or locus standi to challenge the appellant's certificate. Thus, the High Court committed an error by directing the Scrutiny Committee to entertain the complaint filed by Respondent 5. It has further been submitted that, despite the directions given by this Court, the Scrutiny Committee failed to ensure compliance with the principles of natural justice, as the appellant was denied the opportunity to cross-examine witnesses, and no order was passed with respect to his application for recalling such witnesses for the purpose of cross-examination, which has no doubt, resulted in the grave miscarriage of justice. The affidavit filed by the Scrutiny Committee did not clarify, or make any specific statement with respect to whether or not the appellant was permitted to cross-examine witnesses. It further did not clarify whether the application dated 28-2- 2012 filed by the appellant to recall witnesses for the purpose of cross-examination, has been disposed of. Moreover, the procedure adopted by the Scrutiny Committee is in contravention of the statutory requirements, as have been specified under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (VimuktaJatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste



Certificate Act, 2000 (Maharashtra Act 23 of 2001) (hereinafter referred to as "the 2001 Act") and the 2003 Rules which are framed under the 2001 Act and therefore, all proceedings hereby stand vitiated. The appellant placed reliance upon several documents which are all very old and, therefore, their authenticity should not have been doubted. The earlier report submitted by the Vigilance Cell dated 29-12-1998 clearly stated that the traits and characteristics of the appellant's family matched with those of Bhil Tadvi (Scheduled Tribes). The action of Respondent 5 is therefore completely mala fide and is intended, solely to harass the appellant, and the High Court committed grave error in not deciding the issue related to the locus standi of Respondent 5 in relation to him filing a complaint in the first place, as the said issue was specifically raised by the appellant. Therefore, the present appeal deserves to be allowed."

The Apex Court further considers locus of the complainant therein. Paragraph 18 thereof reads as follows:

"Locus standi of Respondent 5

18. As Respondent 5 does not belong to the Scheduled Tribes category, the garb adopted by him, of serving the cause of Scheduled Tribe candidates who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether Respondent 5, is in fact, in a legitimate position to lay any claim before any forum, whatsoever."

(Emphasis supplied) The Apex Court has proceeded on the foundation that the 5th respondent/complainant does not belong to Scheduled Caste category; the garb adopted by him of serving the cause of Scheduled Tribe candidate was held to be acceptable. The Apex Court further has held as follows:

"19. This Court in Ravi Yashwant Bhoir v. District Collector, Raigad [(2012) 4 SCC 407] , held as



*under : (SCC pp. 434-35, paras 58-60) "58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.*

*59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.*

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

20. A similar view has been reiterated by this Court in K. Manjusree v. State of A.P. [(2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] , wherein it was



held that the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court on the grounds of delay and non-maintainability alone.

21. *In Balbir Kaur v. U.P. Secondary Education Services Selection Board [(2008) 12 SCC 1 : (2009) 1 SCC (L&S) 106] , it has been held that a violation of the equality clauses enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons. While dealing with the similar issue, this Court in Raju RamsingVasave v. Mahesh DeoraoBhivapurkar [(2008) 9 SCC 54 : (2008) 2 SCC (L&S) 802] held : (SCC p. 74, para 45) "45. We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from*



doing so." (See also Manohar Joshi v. State of Maharashtra[(2012) 3 SCC 619].)

22. In Vinoy Kumar v. State of U.P. [(2001) 4 SCC 734 : 2001 SCC (Cri) 806 : AIR 2001 SC 1739] , this Court held : (SCC p. 736, para 2) "2. ... Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."

23. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo motu, in such respect."

(Emphasis supplied)

The Apex Court was considering a case where the complainant therein did not belong to Scheduled Caste, he was infact belonging to general category. The contention was, he was espousing the cause for justice for the people belonging to the Scheduled Caste. Therefore, the Court holds that the complainant had no locus to challenge a caste certificate given to a Scheduled Caste. At paragraph 23, the Apex Court clearly holds that in exceptional circumstances, the Court may examine the issue even if bonafides of the complainant are doubted, but the issue



raised by him in the opinion of the Court would require consideration. The petitioner, in the case at hand, is a person belonging to Scheduled Caste. Therefore, it cannot be said that he has no locus to call in question a caste certificate issued to another Scheduled Caste person, which according to him is a fraud, and takes away the right and interest of a genuine Scheduled Caste. The revision filed by the second respondent is elaborate and every minute detail is narrated, any observation made on the contents of the revision petition will prejudice the case of the petitioner before the Deputy Commissioner.

14.28. By relying on **Vageesh's** case, he submits that even a person not belonging to the scheduled caste, in exceptional circumstances may impugn the caste claim of an SC/ST member in the larger interest of justice for the SC/ST community. This being the case, Respondent No.9 being a Scheduled caste member himself is without any doubt said to hold locus to file an appeal under the Act of 1990.

14.29. As regards the contention of learned counsel for the petitioner that the appeal filed by respondent No.9 is barred by law of limitation, his submission is that the period of limitation



commences from the date of knowledge of the order. Respondent No.9 having come to know of all these only after he had sought to contest in the election from the date of knowledge of respondent No.9, the appeal which has been filed is within time. In this regard, he relies upon the decision of the Hon'ble Apex Court in ***Madan Lal v. State of U.P.***,¹⁷, more particularly para nos. 8 and 9 thereof, which are reproduced hereunder for easy reference:

8. *The Act we are concerned with does not state what would happen if the Forest Settlement Officer made an order under Section 11 without notice to the parties and in their absence. In such a case, if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appeal from the order, would the remedy be lost for no fault of his? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. This principle is embodied in Order 20, Rule 1 of the Code of Civil Procedure; though the Forest Settlement Officer adjudicating on the claims under the Act is not a court, yet the principle which is really a principle of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions must also apply to him. The point has been considered and decided by this Court in Raja Harish Chandra Raj*

¹⁷ (1975) 2 SCC 779



Singh v. Deputy Land Acquisition Officer [AIR 1961 SC 1500 : (1962) 1 SCR 676] . This was a case under the Land Acquisition Act, 1894 and the Court was considering the question of limitation under the proviso to Section 18 of that Act. Under Section 18 of the Land Acquisition Act a person who has not accepted the Collector's award can apply to the Collector requiring him to refer the matter for the determination of the court. This application has to be made within six months from the date of the Collector's award in the case where the person interested was not present or represented before the Collector at the time when he made his award or had received no notice from the Collector of the award. Construing the expression "the date of the award" this Court observed:

"The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way.

... where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the order must mean either actual or constructive communication of the said order to the party concerned".

9. *The High Court in the case before us was therefore right in holding that the impugned order should be deemed to have been passed on April 24, 1956 when the Forest Department came to know of the order and "the right of appeal granted to the Department should be determined on that very basis".*



14.30. By relying on **Madan Lal's** case, he submits that the limitation to file an appeal against any order of a judicial or quasi-judicial body ought to be calculated from the date of knowledge of the award and not the date of the issuance of the award itself. It is a fundamental principle of fair play that a party whose rights are affected by an order ought to have notice of it as envisioned under Order 20 Rule 1 of the CPC. Respondent No. 9 having gained knowledge of the fraudulent act of the Petitioner only in the year 2023 while contesting the Assembly Elections, came to be aggrieved, and the order of withdrawal came to his knowledge subsequently. This being the case, Respondent No. 9 is well within the period of limitation having sought legal recourse within the time frame from the date of knowledge of the award.

14.31. He relies upon the decision of Hon'ble Apex Court in ***Alamelu Ammal vs The District***



Collector¹⁸, more particularly para no. 3 thereof, which is reproduced hereunder for easy reference:

3. Heard the learned counsel for the appellant as also the learned Government Advocate appearing for the respondent. Sub-section (2) of Section 12 provides that against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the date of the decision, and any person aggrieved by such decision may, within three months from the said date, appeal to the Tribunal, provided that the Tribunal may, in its discretion, allow further time not exceeding six months for the filing of any such appeal. Section 70 which deals with the limitation under the Act stipulates that a copy of every decision or order in any proceeding against which an appeal or revision is provided for under this Act shall be communicated in such manner as may be prescribed and for the purposes of computing the period of limitation in respect of any appeal or application for revision against any decision or order, the date of communication of a copy of the decision or order to the appellant or applicant shall be deemed to be the date of the decision or order. The appellant before us as also before the Tribunal below was not a party to the proceedings before the Settlement Tahsildar, Salem, the original authority. Though the appellant claims to be the wife of Sadayan alias Sella Gounder, without disclosing the existence of the wife, Sellayee Ammal the mother of Sadayan alias Sella Gounder appears to have her claim as the successor in interest of deceased Sadayan. Coming to know of this, the wife initiated the appeal proceedings before the Tribunal below. It is not the case of the respondent or even the authorities below that any copy of the order or decision of the Settlement Tahsildar, Salem dated 30.11.70 was

¹⁸ (1997) (I) CTC 669



served on the present appellant. Even the copy of the order of the original authority disclosed that copy of the said order has been communicated to the claimant noticed therein viz., Sellayee Ammal as also to the Tahsildar, Attur and the Assistant Settlement Officer and the Settlement Officer, Salem. The appellant appears to have moved and obtained the copy and it is noticed in paragraph 5 of the order of the Tribunal below that the order of the Settlement Tahsildar dated 30.11.70 was claimed to be available to the appellant on 15.9.83 and that therefore there can be no infirmity in the filing of the appeal within three months from the date of such receipt. Normally the period of limitation stipulated for any appeal or revision against any proceeding would run only from the date of knowledge or service of a copy of the order which ever is earlier. Unless there is any specific stipulation to the contra, Section 70 of the Act get attracted wherein it is made clear that a copy of every decision or order passed in any proceeding against which an appeal or revision is provided for shall be communicated in such manner as may be presented and that for purposes of computing the period of limitation in respect of any appeal or Revision the date of Communication of a copy of the decision or order shall be deemed to be the date of decision or order. This provision not only placed the issue beyond controversy as to how the limitation has to be computed but even that apart the claims of the person who was not a party to the proceedings in which an order was passed behind his/her back cannot be rejected summarily though no such copy of order passed in the proceedings were also served on such person. In view of the indisputable facts on record that no copy of order dated 30.11.70 was served in due course upon the appellant and that the appellant came to secure a copy only in September, 1983, the appeal filed before the Tribunal below cannot be said to be beyond the period of limitation and the Tribunal below committed an error in misconstruing the provisions relating to the computation of limitation for appeal before it.



14.32. By relying on **Alamelu Ammal's** case, he submits that for purposes of computing limitation as regards an appeal or revision, the date of communication of a copy of the order shall construed to be the date of the decision itself. The same would apply even to a person who is not a party to the earlier decision and Respondent No. 9 having satisfied this aspect is hence not barred by limitation.

14.33. He relies upon the decision of Hon'ble Apex Court in **P. Sundarmurthy vs. The State of Government¹⁹**, more particularly para no. 7 thereof, which is reproduced hereunder for easy reference:

7. On the first contention, it is to be pointed out that the appeal filed by the respondents 4 to 8 under section 69[1] of the Act was not entertained on the ground that the appeal was filed belatedly. As pointed out earlier, the respondents 4 to 8 were not the respondents in OA. No. 5/2008 filed by the writ petitioner before the 3rd respondent herein. In fact, there were no respondents in the said Original Application. Therefore, the respondents 4 to 8 being not

¹⁹ 2015 SCC Online Mad 9271



parties to the Original Application, cannot be blamed for approaching the authority after they came to know the order. Therefore, when the private respondents stated that they came to know about the order only subsequently, the Commissioner took a narrow and pedantic view stating that it is strange for the respondents 4 to 8 to contend that they came to know of the order only in September 2011 when renovation of the temple was going on from 2008. One important fact which the Commissioner failed to take note of is that the petitioner should have established that the private respondents 4 to 8 had the knowledge of the order passed in OA. No. 5/2008 on the date when it was pronounced or subsequently thereafter. Having failed to do so, the question of objecting the appeal petition filed by the respondents 4 to 8 on the ground that it is belated, is a plea that should have been rejected. There is no material placed before the Commissioner by the writ petitioner stating that the respondents 4 to 8 had knowledge of the order in OA. No. 5/2008 dated 25.01.2011 prior to September 2011. Therefore, the limitation shall be computed only from the date of knowledge which has to be accepted as September 2011. If that is taken into consideration, then there is no delay and the appeal petition filed by respondents 4 to 8 was perfectly well within the period of limitation. However, while passing the order, the Commissioner did not take into consideration that vital aspect and this error committed by the Commissioner continued with the Government when they considered the revision filed under section 114 of the Act, by passing the order dated 18.04.2013. Only on review, the Revisional Authority came to understand the facts and allowed the revision.

14.34. By relying on **P. Sundarmurthy's** case, his submission is that although a third party to the



earlier order files an appeal, and the appellant takes the contention that the date of his knowledge of the order was much later than the date of the order, it is for the party contending that he/she is barred by limitation to establish that the private party had knowledge of the order on the date of its pronouncement itself or subsequently thereafter. Hence, it is for the Petitioner to prove that Respondent No. 9 had knowledge of the order of withdrawal much earlier itself.

14.35. He relies upon the decision of Hon'ble Apex Court in ***State of Punjab v. Qaisar Jehan Begum*²⁰**, more particularly para no. 4 thereof, which is reproduced hereunder for easy reference:

4. As to the second part of clause (b) of the proviso, the true scope and effect thereof was considered by this court in Raja Harish Chandra's case. It was there observed that a literal and mechanical construction of the words "six months from the date of the Collector's award"

²⁰ 1963 SCC OnLine SC 54



occurring in the second part of clause (b) of the proviso would not be appropriate and "the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression ... used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively". Admittedly the award was never communicated to the respondents. Therefore the question before us boils down to this. When did the respondents know the award either actually or constructively? Learned counsel for the appellant has placed very strong reliance on the petition which the respondents made for interim payment of compensation on December 24, 1954. He has pointed out that the learned Subordinate Judge relied on this petition as showing the respondents' date of knowledge and there are no reasons why we should take a different view. It seems clear, to us that the ratio of the decision in Raja Harish Chandra case (supra) is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954 that the respondents had knowledge of the award. One of the



respondents gave evidence before the learned Subordinate Judge and she said:

"The application marked as Ex. D-1 was given by me but the amount of compensation was, not known to me, nor did I know about acquisition of the land. Chaudhari Mohd. Sadiq, my Karinda had told me on the day I filed the said application that the land had been acquired by the Government."

This evidence was not seriously contradicted on behalf of the appellant and the learned Subordinate Judge did not reject it. It is worthy of the note that before the Collector also the appellant did not seriously challenge the statement of the respondents that they came to know of the award on July 22, 1955 the date on which the compensation was paid. On the reply which the appellant filed before the learned Subordinate Judge there was no contradiction of the averment that the respondents had come to know of the award on July 22, 1955. That being the position we have come to the conclusion that the date of knowledge in this case was July 22, 1955. The application for a reference was clearly made within six months from that date and was not therefore barred by time within the meaning of the second part of clause (b) of the proviso to Section 18 of the Act.

14.36. By relying on **Qaisar Jehan Begum's** case, he submits that a party affected by an award must have knowledge of it, either, actually or constructively. 'Knowledge' does not mean mere knowing of the fact that an award has been passed but it also extends to knowing the



essential contents of such award. Therefore any reference as regards the knowledge of an award should also include the essential contents of it. In that view, Respondent No.9 was clearly unaware of the essential contents of the award until a later stage.

14.37. Respondent No.9 did not know of any of the proceedings and the details thereof, it is only after coming to know of the dismissal of the appeal on account of it being withdrawn by imposing Rs.1 lakh as cost and directing a enquiry that respondent No.9 became aware of the fact that there is no final adjudication of the */is* relating to the Caste Certificate of the petitioner and as such respondent No.9 has filed the aforesaid appeal.

14.38. His submission is also that the correctness of the DCVC order has never been adjudicated. The writ petition which had been filed was disposed of directing the petitioner therein to



approach the Appellate Authority. On the appeal being filed before the Appellate Authority, the petitioner had challenged the notice issued therein, which came to be rejected by this Court and the matter being taken up by the Appellate Authority, Sri.Shankarrao Doddi had sought to withdraw the proceedings. Though the withdrawal was permitted, an enquiry had been ordered, the enquiry was not made.

14.39. A Revision Petition had been filed, though the Single Judge had held that revision was maintainable, the Division Bench set aside the order, thus he submits that in none of the matters, there is any finality which has been arrived at, hence the question of Doctrine of Merger being applicable would not arise, the matter is still pending and required to be adjudicated by the Appellate Authority. In this regard, he relies upon the decision of Hon'ble Apex Court in ***Kaikhosrou (Chick) Kavasji***



Framji v. Union of India²¹, more particularly para nos. 53, 54 and 55 thereof, which are reproduced hereunder for easy reference:

53. *In our view, the principle of merger is fairly well settled. For merger to operate, the superior court must go into the merits of the issues decided by the subordinate court and record finding(s) one way or other on its merits. If this is not done by the superior court, a plea of merger has no application in such a case and the order of the subordinate court would continue to hold the field (see S. Shanmugavel Nadar v. State of T.N. [S. Shanmugavel Nadar v. State of T.N., (2002) 8 SCC 361]).*

54. *In our view, this Court while disposing of the appeals by its order dated 4-8-1998 [Union of India v. P.T. Anklesaria, (2014) 14 SCC 204, 211 (footnote 6)] , did not go into the merits of the various contentions which were decided by the High Court in its order dated 6-2-1979 and disposed of the appeal on the statement made by the respondents through the Solicitor General that Respondent 1 (Union of India) would take recourse to the remedy of the civil court by filing a civil suit.*

55. *Indeed, in the light of such statement made by the respondents (who were appellants in the appeal), which resulted in disposal of their appeal, the respondents themselves did not call upon this Court to examine the merits of the issues raised by them in their appeals. In such a situation, there was no occasion for this Court to apply the mind to the merits much less to record any finding on any of the issues arising in the appeal. In this view of the matter, the principle of merger could not operate.*

²¹ (2019) 20 SCC 705



14.40. By relying on **Kaikhosrou's** case, his submission is that the principle of merger would not apply in the event the superior court does not deal with the merits of the issues dealt with by the subordinate court. In this case, the Hon'ble Apex Court having plainly dismissed the matter without interfering into the merits and issues dealt with by the High Court, the doctrine of merger would not apply and thereby Respondent No. 9's appeal would survive.

14.41. As regards the further contention that the Appellate Authority had become 'Functus Officio' on the withdrawal of the appeal, he relies upon the decision of Hon'ble Apex Court in **SBI v. S.N. Goyal**²², more particularly para nos. 25, 26, 27, 28, 29 and 30 thereof, which are reproduced hereunder for easy reference:

25. *The learned counsel for the respondent contended that the appointing authority became functus officio once it passed the order dated 18-1-1995 agreeing with the penalty proposed by*

²² (2008) 8 SCC 92



the disciplinary authority and cannot thereafter revise/review/modify the said order. Reliance was placed on the English decision V.G.M. Holdings Ltd., Re [(1941) 3 All ER 417] wherein it was held that once a Judge has made an order which has been passed and entered, he becomes functus officio and cannot thereafter vary the terms of his order and only a higher court, tribunal can vary it. What is significant is that decision does not say that the Judge becomes functus officio when he passes the order, but only when the order passed is "entered". The term "entering judgment" in English law refers to the procedure in civil courts in which a judgment is formally recorded by the court after it has been given.

26. *It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage an authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Vol. 2, pp. 1946-47) gives the following illustrative definition of the term "functus officio":*

"Thus a judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision."

27. *Black's Law Dictionary (6th Edn., p. 673) gives its meaning as follows:*

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority."

28. *We may first refer to the position with reference to civil courts. Order 20 of the Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when the*



judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand writer [if the Judge is specially empowered (sic by the High Court) in this behalf]. The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by Section 152 or on review. Thus, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment (subject to Section 152 and power of review). The position is different with reference to quasi-judicial authorities. While some quasi-judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi-judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or



communicated, the authority will become functus officio. The order dated 18-1-1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the appointing authority became functus officio when it signed the note dated 18-1-1995.

29. *Let us next consider whether the decision taken on 18-1-1995 was a final decision. A careful examination shows that the order dated 18-1-1995 was intended only to be tentative and not final. Firstly, the said decision was not communicated to the respondent, nor was any letter or order issued to the respondent imposing the penalty mentioned in the order dated 18-1-1995. Secondly, the appointing authority by letter dated 2-2-1995 (Ext. P-23) informed the Chief Vigilance Officer of the Bank about the enquiry against the respondent, his decision accepting the findings of the enquiry officer, and the proposal to show leniency by imposing only a punishment of reduction of pay by four stages. The Chief Vigilance Officer sent a reply dated 7-2-1995 (Ext. D-2) wherein he observed that "by pocketing the money of the customers Shri Goyal has exposed the Bank's faith reposed in him" and there was no ground for showing leniency. He also expressed the view that the respondent deserved a more severe punishment and requested the appointing authority to re-examine whether the respondent should be continued in the post. Thereafter the disciplinary authority reconsidered the entire issue again and put up another note dated 23-3-1995/2-5-1995 to the appointing authority proposing the punishment of removal from service. After considering the said recommendation, the appointing authority passed the following order on the said note on 3-5-1995:*

"On a dispassionate and objective evaluation of the facts, circumstances of the case, inquiry proceedings and evidence available, I concur with the recommendations of the disciplinary



authority mentioned at Serial No. 4 of the note and have come to the conclusion that the penalty of 'removal from Bank's service' proposed to be inflicted on Shri S.N. Goyal, Officer JMGS I, is just and appropriate and I, therefore, order imposition of this penalty on the official."

30. *It is thus clear that on 18-1-1995, the appointing authority had only tentatively approved the proposal of the disciplinary authority that a lenient view be taken by imposing a penalty of reducing the pay by four stages in the timescale; and that on 3-5-1995, a final decision was taken in regard to the penalty and that final order was communicated to the respondent as per letter dated 30-6-1995. Therefore, the contention that the appointing authority had earlier passed a final order on 18-1-1995 and had become functus officio and therefore, it could not change the said order dated 18-1-1995 is liable to be rejected.*

14.42. By relying on **S.N. Goyal's** case, he submits that the decision of a Court is considered to be *functus officio* only upon the due entering of the judgement/order. Moreover, the said judgement/ order ought to have decided upon a question brought before it, Respondent No.2- authority having ordered withdrawal with costs, has not gone into the root of the matter and the merits involved therein, hence it cannot be



regarded as *functus officio* and is capable to decide on the appeal.

14.43. Respondent No.9 has not filed an appeal under Section 4D of the 1990 Act. In terms of Section 6B of the 1990 Act the jurisdiction of the Civil Court is ousted. In this regard, he relies upon the decision of the Hon'ble Apex Court in ***Hari Prasad Mulshanker Trivedi v. V.B. Raju***²³, more particularly para nos. 24, 30, 31 and 32 thereof, which are reproduced hereunder for easy reference;

24. *"Supremacy of law demands that there shall be an opportunity to have some court to decide whether an erroneous rule of law was applied and whether the proceedings in which facts were adjudicated were conducted regularly". This remark was made in St. Joseph Stock Yards Co. v. United States [298 US 38] by Justice Brandeis in his dissenting opinion. In that case a public utility was challenging a rate order as confiscatory. "It is entirely clear that the remark is not the law with respect to much administrative action. The remark may be the law with respect to some administrative action, but if so, that action is not clearly identifiable. [See Kenneth Culp Davis "Administrative Law Treatise", Vol. 4, p. 98] But the question still remains whether the Brandeis remark has validity for some types of administrative action,*

²³ (1974) 3 SCC 415



and if so, what types. On this question the opinions are singularly unhelpful. One may surmise that the Brandeis remark has validity in the context in which it was uttered — a public utility rate case in which confiscation was claimed. [Ibid, p. 102] Article 327 gives full power to Parliament subject to the provisions of the Constitution to make laws with respect to all matters relating to or in connection with elections including the preparation of electoral rolls. It was, therefore, open to Parliament to prescribe the mode of the preparation of the electoral roll and say that it is not liable to be challenged except in the manner provided. Parliament was, therefore, competent, subject to the provisions of the Constitution, to exclude the jurisdiction of the civil court or the tribunal trying an election petition to go into the question whether the name of any person has been entered therein illegally. The right to stand for election is a statutory right and the statute can therefore regulate the manner in which the right has to be enforced or the remedy for enforcing it. We think that the 1950 Act provides a complete code so far as the preparation and maintenance of electoral rolls are concerned. The Act enacts a complete machinery to enquire into claims and objections as regards registration as voter and for appeals from the decision of the registering officer (see Sections 21 to 24 of the 1950 Act both inclusive). Elaborate rules have also been made for inquiry into claims to be registered as voters and for considering and disposing of objections thereto (see Rules 12 to 24 of the Registration of Electoral Rules). The definition of the word "elector" in Section 2(1)(e) of the 1951 Act would indicate that a person whose name is actually entered in the electoral roll for the time being and who is not subject to any of the disqualifications in Section 16 would be an elector. Any person who is a citizen of India and who has attained the age as prescribed by law, subject to the minimum as provided in Article 326, is entitled to be registered as a voter in the roll of electors. This is the positive way of expressing eligibility for registration as a voter.



He should not also be subject to any of the disqualifications prescribed by Parliament by law on the grounds mentioned in the article. The Parliament has prescribed in Section 16 of the 1950 Act the disqualifications.

30. *The requirement of ordinary residence as a condition for registration in the electoral rolls is one created by Parliament by Section 19 of the 1950 Act, and as we said, we see no reason why Parliament should have no power to entrust to an authority other than a court or a tribunal trying an election petition the exclusive power to decide the matter finally. We have already referred to the observation of this Court in Kabul Singh case that Sections 14 to 24 of the 1950 Act are integrated provisions which form a complete code in the matter of preparation and maintenance of electoral rolls. Section 30 of that Act makes it clear that civil courts have no power to adjudicate the question. In these circumstances we do not think that it would be incongruous to infer an implied ouster of the jurisdiction of the Court trying an election petition to go into the question. That inference is strengthened by the fact that under Section 100(1)(d)(iv) of the 1951 Act the result of the election must have been materially affected by non-compliance with the provisions of the Constitution or of that Act or of the rules, orders made under that Act in order that High Court may declare an election to be void. Non-compliance with the provisions of Section 19 of the 1950 Act cannot furnish a ground for declaring an election void under that clause.*

31. *We, therefore, return to the question whether these respondents were not qualified or were disqualified to be chosen to fill the seat under the Constitution or the 1950 Act or the 1951 Act. As we said, there was no allegation that they were disqualified under Section 16 of the 1950 Act. Nor was there any ground taken that they were not qualified in the sense of their being not citizens or under the age as required. As their names were entered in the electoral roll*



and as they did not suffer from any of the disqualifications mentioned in Section 16 in of the 1950 Act, they were electors within the definition of the term in Section 2(1)(e) of the 1951 Act. They were, therefore, qualified to be chosen as candidates under Section 3 of the 1951 Act.

32. *We think that the intention of the Parliament to oust the jurisdiction of the Court trying an election petition to go into the question whether a person is ordinarily resident in the constituency in the electoral roll of which his name is entered is manifest from the scheme of 1950 and the 1951 Acts. It would defeat the object of the 1950 Act if the question whether a person was ordinarily resident in a constituency were to be tried afresh in a court or tribunal, trying an election petition.*

14.44. By placing reliance on **Hari Prasad**

Mulshankar Trivedi's case, his submission is that it is open for the legislature to grant or restrict the jurisdiction of a body to adjudicate on certain matters. Respondent No.2 being a special body under the Act of 1990 to adjudicate on matters relating to the caste status of SC/ST persons as an appellate body, is hence the right forum to decide on the matter as appealed for by Respondent No. 9.



14.45. He relies upon the decision of the Hon'ble Apex Court in ***Bhagwati Prasad Dixit v. Rajeev Gandhi***²⁴, more particularly para nos. 11 and 12 thereof, which are reproduced hereunder for easy reference:

11. These cases clearly lay down that when the matter falls within Section 9(2) of the Citizenship Act, 1955, all other provisions of law are excluded. The authority prescribed under the Citizenship Act, 1955 alone can decide the questions arising under Section 9(2) and the rules of evidence which should govern that decision shall be those prescribed for the purpose under that Act. The High Court however relied on two decisions of this Court in Arun Kumar Bose v. Mohd. Furkan Ansari [(1984) 1 SCC 91 : AIR 1983 SC 1311 : (1984) 1 SCR 118] and the decision in Surinder Singh v. Hardial Singh [(1985) 1 SCC 91 : (1985) 1 SCR 1059] (to reach the conclusion that by virtue of Article 329 of the Constitution all questions arising in an election petition were exclusively triable in an election petition and by no other authority). In those decisions the Supreme Court was generally concerned with the power of the High Court to try all issues arising in an election petition in accordance with the provisions of the Representation of the People Act, 1951. It is no doubt true that Article 329(b) of the Constitution provides that notwithstanding anything in the Constitution no election to either House of Parliament or to the House or either House of the legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the legislature. It is also true that one of the grounds

²⁴ (1986) 4 SCC 78



on which an election of a candidate can be set aside in the course of an election petition under the Representation of the People Act, 1951 is that the candidate was not a citizen of India at the relevant time. A man may not be a citizen of India because he has not acquired the citizenship of India at all or having acquired he may have lost it by voluntarily acquiring the citizenship of another country as provided in Section 9(1) of the Citizenship Act, 1955. For purposes of deciding the question arising under Section 9(1) of that Act, the Central Government by virtue of the power conferred on it by Section 9(2) has been given an exclusive power to determine in accordance with the rules of evidence provided for the purpose whether a person has acquired the citizenship of another country. It follows that when once a person is admitted or held to be a citizen of India, unless there is a decision of the Central Government under Section 9(2) of the Citizenship Act, 1955 that he has acquired the citizenship of a foreign country, he should be presumed to be an Indian citizen. Section 9 of the Citizenship Act, 1955 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country. Sub-clause (d) of clause (1) of Article 102 of the Constitution provides that a person shall be disqualified for being chosen as and for being a member of either House of Parliament (i) if he is not a citizen of India, (ii) or has voluntarily acquired the citizenship of a foreign State or (iii) is under any acknowledgement of allegiance or adherence to a foreign State. We are concerned here with a case falling under clause (ii) and that question has to be decided by virtue of Article 11 of the Constitution and Section 9(2) of the Citizenship Act, 1955 by the Central Government only. The policy behind Section 9(2) appears to be that the right of citizenship of the person who is admittedly an Indian citizen should not be exposed to attack in all forums in the country, but should be decided by one authority in accordance with the prescribed rules and that every other court or authority would have to act only on the basis of



the decision of the prescribed authority in that behalf and on no other basis. That being the mandate of the law, even the High Court trying an election petition can declare an Indian citizen as having acquired the citizenship of a foreign State only on the basis of a declaration made by the Central Government. If such a declaration made by the Central Government is produced before a High Court trying an election petition the High Court has to give effect to it. If such a declaration is not forthcoming, the High Court should proceed on the ground that the candidate concerned has not ceased to be an Indian citizen. It cannot independently hold an enquiry into that question on its own. This is also the view of the Calcutta High Court in Birendranath Chatterjee v. State of W.B. [AIR 1969 Cal 386] though the question there did not involve Article 329 of the Constitution. What we have said now may not apply to the other two types of disqualifications referred to in sub-clause (d) of clause (1) of Article 102 of the Constitution and we express no opinion on those issues. The view we have taken on the primacy of Section 9(2) of the Citizenship Act, 1955 does not derogate from the plenary powers of the High Court in trying an election petition under the Representation of the People Act, 1951 but only leads to a harmonious way in which the two types of issues, namely, the issues relating to the validity of an election to either House of Parliament or of a State legislature and the issues relating to loss of Indian citizenship on the acquisition of the citizenship of a foreign country which are both vital can be resolved.

12. *In the circumstances it is difficult to agree with the view of the High Court that when a question whether a person has acquired the citizenship of another country arises before the High Court in an election petition filed under the Representation of the People Act, 1951 it would have jurisdiction to decide the said question notwithstanding the exclusive jurisdiction conferred on the authority prescribed under Section 9(2) of the Citizenship Act, 1955 to decide the question. Whatever may be the*



proceeding in which the question of loss of citizenship of a person arises for consideration, the decision in that proceeding on the said question should depend upon the decision of the authority constituted for determining the said question under Section 9(2) of the Citizenship Act, 1955.

14.46. By relying on **Bhagwati Prasad Dixit's** case, he submits that even in the event of an Election Petition being preferred, the Court would still be guided by the authority constituted under the 1990 Act to determine matters on the said question as regards the validity of a caste certificate.

14.47. The 1990 Act provides a comprehensive framework, and the validity or otherwise of a caste certificate is required to be determined under the provisions of the 1990 Act. In this regard, he relies upon the decision of the Hon'ble Apex Court in **Durga Singh v. M. Lakshman Yadav 2003²⁵**, more particularly

²⁵ SCC OnLine AP 533



para no. 6 thereof, which is reproduced hereunder for easy reference:

6. *A perusal of the voters' list and the Caste Certificate issued by the Mandal Revenue Officer disclose that the House Number is correct, name of the returned candidate and the father's name also correct but in the voters' list the names were shown in abbreviated form but whereas in the Caste Certificate the surname and full names are mentioned. However, it is not within the scope and ambit of the Election Tribunal to go into the legality and validity of the said Caste Certificate. As long as the petitioner does not take steps before the appropriate forum for declaring that the returned candidate is not a Backward Class candidate, the said question as to whether the returned candidate is not a Backward Class cannot be gone into by the Election Tribunal and the said issue cannot be decided as it is not one of the grounds to set aside the election of the returned candidate. The issue raised in this Civil Revision Petition is squarely covered by a judgment of this Court in Rajendra Pratap Bhanj Deo v. Regu Mahesh @ Regu Maheshwar Rao, 2003 (2) ALD 304, rendered by my learned Brother L. Narasimha Reddy, J. while dealing with the similar contentions, as held in Paras 24, 25, 26 and 27 as follows:*

Para 24. The contention of the petitioner is that the 1st respondent does not belong to Scheduled Tribe. The allegation of the petitioner on this ground turns around the fact as to whether the 1st respondent holds a valid Caste Certificate to the effect that he belongs to Scheduled Tribe community. It is true that it is permissible in an Election Petition to verify as to whether a particular candidate fits into the status, which he claims, to contest as a candidate. However, where the decision as to the status of a candidate is left or reserved to be decided by a



special enactment, the procedure prescribed thereunder needs to be followed.

Para 25. In this context, it needs to be observed that the A.P.State Legislature has enacted the State Act of 16 of 1993 to regulate the issue of Community Certificate relating to persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and matters connected thereof or incidental thereto. Section 5 of the State Act provides for cancellation of the certificates. The proceedings for cancellation can be initiated either suo motu by the competent authority or on a written application by any person. Section 6 places the burden on the person claiming the social status. In the event of the refusal to issue a Caste Certificate under Section 5 of the State Act, an appeal is provided under Section 7. A further revision is provided to the Government under Section 8. The jurisdiction of the Civil Court is barred under Section 17. Section 19 confers overriding effect on the Act in the event of an inconsistency with any other law for the time being in force. Under Section 21, the Certificate issued by any competent authority before the commencement of the Act, is conferred legitimacy, unless it is cancelled under the provisions of the State Act.

Para 26. It is not as if the petitioner was not aware of these provisions of the State Act. As a matter of fact, in the Election Petition, reference was made to a show-cause notice said to have been issued to the 1st respondent under the provisions of the State Act. As long as Caste Certificate issued to the 1st respondent is not cancelled or varied, it cannot be said that he does not or ceased to belong to ST community. If an independent enquiry into the validity or otherwise of the Caste Certificate issued to the 1st respondent is to be undertaken in this Election Petition, it would result in parallel exercise, one by the machinery provided for under the Act and the other by this Court. While proceedings under the State Act by the competent authority therein confirms to that Act



an enquiry by this Court would be at the teeth of several provisions of the State Act.

Para 27. It is true that in the State Act, the purport of the said certificates is said to be for the benefit of admission into educational institutions, public employment, and the elections to the local authorities and co-operative institutions. However, it is not the case of the petitioner that any other law governs the issuance of certificates conferring social status for the purpose of election under the RP Act. Once the competent authority under the State Act is in seisin of the matter, property and harmonious interpretation of the provisions, demand that this Court gives the way for machinery provided for under the State Act to take its course. This would accord with the principle that the special will prevail over the general. Though this may become relevant, if the trial of the petitioner is undertaken, still, it may throw light on the existence or otherwise of cause of action."

14.48. By relying on **Durga Singh's** case, he submits that it is not within the scope of an Election Tribunal to go into matters of legality and validity of the caste certificate of a returned candidate and the same is not a ground to set aside the election of a returned candidate. The Act of 1990 providing a comprehensive framework to ascertain the validity or otherwise of a caste certificate and being the statutory



backbone for the issuance of a caste certificate itself, is thus a special legislation. This would then attract the principle that 'special will prevail over the general'. Hence, the rightful legal recourse for Respondent No.9 would be by way of an appeal under the Act of 1990 and not an election petition as contended by the Petitioner.

14.49. Though an election petition could also be filed challenging the result of the elections, he submitted that even if such a proceeding is filed, the Election Tribunal would have to await the decision of the DCVC. So, the matter would have to be referred by the Election Tribunal to the DCVC anyhow.

14.50. In this regard, he relies upon the decision of this Court in ***Sri. Shiddalingappa Mallappa Abbigeri, vs. The Deputy Commissioner***²⁶,

²⁶ W.P. NO. 105645 OF 2023



more particularly para no. 12 thereof, which is reproduced hereunder for easy reference:

***12.** In my considered opinion, the Court seized of the election petition, where a caste certificate is under challenge, ought to have suspended the said proceedings directing the parties to approach the District Caste Verification Committee for necessary orders and on the orders being received, the proceedings in the election petition could have been continued as has been held by the Hon'ble Apex Court in Bharti Reddy v. State of Karnataka. Since the election petition has been dismissed and appeal being pending, respondent No.4 could place the same before the Court seized of the first appeal for necessary orders. In that view of the matter, I pass the following:*

ORDER

i. Writ petition is allowed.

ii. A certiorari is issued, the impugned order bearing No.24351/VER:11/11/2023 dated AIR 2018 SC (SUPP) 1057 NC: 2024:KHC-D:2353 07.09.2023 passed by respondent No.1 vide Annexure-K is quashed. Liberty is however reserved to respondent No.4 as aforesaid.

iii. In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

14.51.By relying on **Shiddalingappa Mallappa Abbigeri's** case, he submits that a Court adjudicating on an Election Petition impugning the caste certificate of the returning candidate,



ought to suspend the proceedings and direct the parties to approach the DCVC for necessary orders as regards the caste status of the candidate, upon which an election petition may further continue. In the event of no such election petition having been filed, the party concerned may directly approach the statutory body seized of the first appeal and Respondent No. 9 has exactly done so by filing for an appeal under the Act of 1990.

14.52. Insofar as appeal is concerned, his submission is also that even if a person who was not party to the proceeding can be permitted to file an appeal and in this regard, he relies upon the decision of the Hon'ble Apex Court in ***Jatan Kumar Golcha v. Golcha Properties (P) Ltd.***,²⁷ more particularly para no. 3 thereof, which is reproduced hereunder for easy reference:

²⁷ (1970) 3 SCC 573



3. In the order of the High Court reference has been made to Rule 139 of the Companies (Court) Rules, 1959, and it has been pointed out that since the appellant had not appeared before the Company Judge she was not entitled to maintain the appeal. It was conceded that no notice had ever been sent to her either by the Official Liquidator or the Company Judge before the order appealed against relating to appellant's property was made. The High Court was of the view that the only remedy of the appellant was by way of a suit after obtaining leave of the Company Judge under Section 446 of the Act. Now an appeal lies under Section 483 of the Act from any order made or decision given in the matter of winding up of a company by the court and it lies to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. There can be no manner of doubt that an appeal was competent against the order made by the Company Judge on July 21, 1969, in view of the terms of Section 483. The only question is whether because the Official Liquidator failed to discharge his duties properly by having a notice issued to the appellant, whose rights were directly affected by the order proposed to be made, the appellant was debarred from filing the appeal. In our opinion apart from Rule 130 to which reference has been made by the High Court the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal



which is permitted by law. It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.

14.53. By relying on the case of **Jatan Kumar Golcha**, his submission is that a person who is not a party to a dispute may prefer an appeal with the leave of the appellate Court so long he is an aggrieved person by such order, in that regard Respondent No.9 herein is thus entitled to file the said appeal.

14.54. His submission is that irrespective of the proceedings challenging the election, a challenge to the certificate in the 1990 Act is separately maintainable and in this regard, he relies upon the decision of the Division Bench of this Court in ***Veeresh vs. The State Of Karnataka***²⁸, more particularly para nos. 16,

²⁸ W.A.NOS.101469-470/2016



17 and 18 thereof, which are reproduced hereunder for easy reference:

16. *A combined reading of Article 243-O of the Constitution of India and Sections 15 and 171 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, makes it clear that the election to panchayat can be called in question only through an election petition, before the competent Authority. Thus, there is no ambiguity with respect to the position of law. However, what is required to be seen in the case on hand is whether the relief sought for in the writ petitions before the learned Single Judge was setting aside of the election results or challenging any election process, thus making it an election petition.*

17. *The prayer made in W.P.Nos. 103198-103199/2016 (GM-CC) is as below:*

" i. Issue a writ, order or direction in the nature of certiorari, quashing the caste certificate dated 20.01.2016 vide No.MSC/CR/145/2015-16, issued by the respondent No.4 in favour of the respondent No.5, produced at Annexure-H."

The prayer made in W.P.No.29822/2016 is as below:

" i. Call for the records which ultimately resulted in issuing Endorsement Annexure A dated 01.03.2016 bearing No.MSC/CR/2015-16 issued by the 4th respondent.

ii. Issue an order, direction, writ in the nature of certiorari quashing the Endorsement Annexure A dated 01.03.2016 bearing No.MSC/CR/2015-16 issued by the 4th respondent.

iii. Issue an order, direction, writ in the nature of quashing the caste certificate dated 20.1.2016 vide Annexure-L issued by the respondent, as the same is illegal and without the authority of law.



iv. Direct the respondent to initiate criminal prosecution against the 5th respondent for making false declaration in obtaining the Caste Certificate for contesting election No.18 Dhannur Zilla Panchayat Constituency."

Neither of the above two sets of writ petitions have anyway prayed for setting aside the election or to declare the candidature of respondent No.5 as invalid. There is no element of prayer, which touches the procedural aspect of the elections held to the Zilla Panchayat. What is prayed is only the document which is called an Income-cum-Caste Certificate issued by the respondent No.4 – Tahasildar, which document, the respondent No.5 is said to have obtained fraudulently. It is very important to note at this juncture that the document challenged, which is the Income-cum-Caste Certificate dated 20.01.2016 and bearing No.MSC/CR/145/2015-16, is not a document confining only for the use of election. It can be observed that such a certificate of income and caste was otherwise also being issued by a competent Authority, who is respondent No.4 – Tahasildar herein, under the Karnataka Scheduled Caste and Scheduled Tribes and Other Backward Classes (reservation in appointments etc.,) Rules, 1992. The said certificate can be used for different purposes. Incidentally, the same certificate could also be used as a proof of caste and income for contesting the elections to Zilla Panchayats also. Thus, it cannot be taken that the impugned Income-cum-Caste Certificate is exclusively a document for the electoral process only. Therefore, challenging the said document, though it may as one of its consequence, have impact in the process of adjudication of the election petition, by that itself it cannot be called that should be through an election petition only and not otherwise. In our view, the learned Single Judge did not make this thin distinction between an election petition as such and challenging a document or issuance of a



document, which has no direct bearing on the election process or its results.

18. *Therefore, we are unable to agree to the main contention taken up by the respondents that the writ petitions as well the present writ appeals are not maintainable and that the appropriate course for the appellants was to challenge the impugned certificate and the process of its issuance only through an election petition.*

14.55. By relying on **Veeresh's** case, he submits that the caste certificate of a person is not a document that is issued exclusively for the purpose of electoral process alone. A challenge to the said document may be a consequence of the electoral process and may impact the outcome of the election petition, but that by itself cannot mandate that a challenge is to be sought only by way of an election petition. In this regard Respondent No. 9 cannot be restricted to seek recourse only by way of an election petition.

14.56. Alternatively, he submits that this Court could also intervene in the matter, where *ex-facie it is*



seen that the certificate obtained by the petitioner is not sustainable and in that regard, he relies upon the decision of the Hon'ble Apex Court in **K. Venkatachalam v. A. Swamickan**²⁹, more particularly para nos. 26, 27 and 28 thereof, which are reproduced hereunder for easy reference:

26. *The question that arises for consideration is if in such circumstances the High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be a Member of Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. From the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as "Venkatachalam, s/o Pethu" taking advantage of the fact that such a person bears his first name. The appellant would be even criminally liable as he filed his nomination on an affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be a fraud on the Constitution.*

27. *In view of the judgment of this Court in the case of Election Commission of India v. Saka Venkata Rao [(1953) 1 SCC 320 : AIR 1953 SC 210] it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court, which have been referred to by the appellant that jurisdiction of*

²⁹(1999) 4 SCC 526



the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above, do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one the bar of Article 329(b) will not come into play when the case falls under Articles 191 and 193 and the whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?

28. *We are, therefore, of the view that the High Court rightly exercised its jurisdiction in entertaining the writ petition under Article 226 of the Constitution and declared that the appellant was not entitled to sit in Tamil Nadu Legislative Assembly with consequent restraint order on him from functioning as a Member of the Legislative Assembly. The net effect is that the appellant ceases to be a Member of Tamil Nadu Legislative Assembly. Period of the Legislative Assembly is long since over. Otherwise we would have directed Respondent 2, who is Secretary to Tamil Nadu Legislative Assembly, to intimate to the Election Commission that Lalgudi Assembly Constituency seat has fallen vacant and for the Election Commission to take necessary steps to hold fresh election from that Assembly constituency. Normally in a case like this the Election Commission should invariably be made a party.*



14.57. By relying on **K. Venkatachalam's** case, his submission is that the High Court has a very wide array of jurisdiction under Article 226, which may even stretch to the extent of election-related matters, any action which is against any provision of law or violative of Constitutional provisions is under the scope of Article 226 for scrutiny in the widest possible terms. Hence, although the impugned notice is a result of an appeal consequent to an election, this Court may interfere and adjudicate on the said matter.

14.58. Lastly, he submits that the decision on DCVC being well-reasoned is not correct in as much as it is completely unsustainable contrary to the detailed enquiry which has been made by DRE Cell. The facts have not been taken into consideration properly, the birth certificate relied upon by DCVC was one which was issued after the commencement of proceedings. The



earlier facts relating to the date of birth, place of birth and place of residence of the petitioner have not been properly considered by DCVC and in this regard, he submits that any false claim of caste membership is a fraud on the Constitution availing of benefits reserved for Scheduled Caste Community by making a false certificate is also a fraud under Constitution.

14.59. In this regard, he relies upon the decision of the Hon'ble Apex Court in ***Madhuri Patil v. Commr., Tribal Development***³⁰, more particularly para nos. 15, 16, 17 and 18 thereof, which are reproduced hereunder for easy reference:

15. *The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records*

³⁰ (1994) 6 SCC 241



a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

16. *Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases.*

17. *We have seen that Miss Suchita rightly made an application before the competent officer*



within whose jurisdiction her father lives in Muland and when he refused to give the certificate, she filed an appeal; approached the High Court and obtained direction and gained admission. It is not in dispute that the Additional Commissioner was delaying it; he did not decide as directed by the High Court, instead directed the Tahsildar to issue the certificate. Thus she secured a false social status certificate and orders of the court were used to gain admission. The judicial process is made use of to secure admission. She continued her studies thereafter pending scrutiny of her status certificate. No doubt there was a delay on the part of the Scrutiny Committee in the disposal of the claims and we do not find any record to scan the reasons for the delay. Suffice to state that her parents have put her under a cloud as to her social status. But as seen from the facts a course of conduct was adopted by her parents to gain admission on the claim which is now found to be false. Parents' misconduct visits the children also many a times. However, she has now completed the course of study except to appear for the final year as contended for her and nothing more is to be done in the situation for her to complete her course of study. We direct the Principal to permit her to sit for the final year examination, if she has completed the course of study as represented to us but not with the social status as a Scheduled Tribe which was claimed fraudulently and made her admission with the aid of the court's order and continue her studies. The delay in disposal facilitated her continuance in study of MBBS course.

18. *The delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study. But for the fact that she has completed the entire course except to appear for the final examination, we would have directed to debar her from prosecuting the studies and appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year*



MBBS. Therefore, we uphold the cancellation of the social status as Mahadeo Koli fraudulently obtained by Km Suchita Laxman Patil, but she be allowed to appear for the final year examination of MBBS course. She will not, however be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli. However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals.

14.60. By relying on **Madhuri Patil's** case, he submits that a party that approaches the Court seeking equity must come with clean hands, and any person who prays relief based upon a false claim or is found to play fraud on the Court, no sympathy or equitable considerations come to his rescue. The petitioner having relied on false caste claims has therefore played fraud on this Court, necessitating dismissal at the bud itself.

14.61. He relies upon the decision of the Hon'ble Apex Court in **Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar**³¹, more particularly para

³¹ (2008) 9 SCC 54



nos. 30 to 38 thereof, which are reproduced hereunder for easy reference;

30. *The principle of res judicata is undoubtedly a salutary principle. Even a wrong decision would attract the principle of res judicata. The said principle, however, amongst others, has some exceptions e.g. when a judgment is passed without jurisdiction, when the matter involves a pure question of law or when the judgment has been obtained by committing fraud on the court.*

31. *In Williams v. Lourdusamy [(2008) 5 SCC 647] this Court stated the law, thus: (SCC p. 650, para 11)*

"11. The principles of res judicata although provide for a salutary principle that no person shall be harassed again and again, have its own limitations. In OS No. 402 of 1987, Respondent 2 was not impleaded as a party. In his absence therefore, the issue as to whether Respondent 2 had entered into an oral agreement of sale or not could not have been adjudicated upon. The said court had no jurisdiction in that behalf. If that was decided in the said suit, the findings would have been nullities."

32. *Two legal principles which would govern a case of this nature are:*

(i) A decision rendered without jurisdiction being a nullity, the principle of res judicata shall not apply.

(ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis thereof or otherwise.



33. *In support of the first principle, we may at the outset refer to Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99] wherein this Court, while discussing the effect of Section 11 CPC on a pure question of law or a decision given by a court without jurisdiction, opined: (SCC p. 42, para 24)*

"24. ... Moreover, this is a pure question of law depending upon the interpretation of Article 371-D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case."

34. *A three-Judge Bench of this Court in Ashok Leyland Ltd. v. State of T.N. [(2004) 3 SCC 1] held: (SCC p. 44, para 118)*

"118. The principle of res judicata is a procedural provision. A jurisdictional question, if wrongly decided, would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waiver or res judicata."

(See also Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230] , Union of India v. Pramod Gupta [(2005) 12 SCC 1] and National Institute of Technology v. Niraj Kumar Singh [(2007) 2 SCC 481 : (2007) 1 SCC (L&S) 668] .)

35. *So far as the second principle, noticed by us, is concerned, there is no dearth of authority. Fraud vitiates all solemn acts. When an order has been obtained by practising fraud on the court, it would be a nullity.*



36. *In Ganpatbhai Mahijibhai Solanki v. State of Gujarat [(2008) 12 SCC 353 : (2008) 3 Scale 556]* this Court held:

"It is now a well-settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same."

It was further observed:

"In T. Vijendradas v. M. Subramanian [(2007) 8 SCC 751] this Court held: (SCC p. 766, paras 27-28)

'27. ... When a fraud is practised on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. (Kendriya Vidyalaya Sangathan v. Ajay Kumar Das [(2002) 4 SCC 503 : 2002 SCC (L&S) 582] and A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] .)

28. Once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party who is a beneficiary thereunder.' "

37. *In K.D. Sharma v. Steel Authority of India Ltd. [(2008) 12 SCC 481 : (2008) 10 Scale 227]* this Court opined:

"Reference was also made to a recent decision of this Court in A.V. Papayya Sastry v. Govt. of A.P. [(2007) 4 SCC 221] Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22)



'22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.'

The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

38. *The order dated 11-8-1988, thus, would not operate as a res judicata so as to disable it from considering the merit of the case of Respondent 1 by the State of Maharashtra or the Maharashtra Pollution Control Board afresh. The decision of the High Court ex facie is unsustainable.*

14.62. By relying on **Raju Ramsing Vasave's** case, he submits that it is settled law that fraud vitiates everything and an order obtained by fraud would not even attract the principles of natural justice when seeking to set aside the same.



14.63. He relies upon the decision of the Hon'ble Apex Court in **Jayashree v. Director of Collegiate Education**³², more particularly para nos. 16 and 20 thereof, which are reproduced hereunder for easy reference:

16. On going through the above said paragraph, therein it has been specifically observed that, if a person obtains a false certificate and gets an appointment, it would be like allowing a thief to retain the stolen property. In that light also the contention taken up by the learned counsel for the petitioner does not hold any water. When the petitioner has taken the benefit on a false certificate, then it cannot be held that the said candidate is fit to hold the post which is reserved for the said category. Even the cancellation of the Caste Certificate has attained finality and even the said order has not been challenged. Under the said facts and circumstances, the contention of the petitioner that she ought not to have been terminated and the benefit of the circular or an order of the appointment could have been given is not acceptable.

20. On going through, the above said paragraphs, the Hon'ble Apex Court has clearly held that where a case is based on fraud no sympathy or equity can come to the rescue of the petitioner. In that light also the contention of the petitioner is not acceptable.

14.64. By relying on **Jayashree's** case, he submits that a person who obtains a false caste certificate and is allowed to use its benefits

³² 2018 SCC OnLine Kar 3923



thereunder would amount to allowing a thief to retain stolen property, and in this regard the Petitioner is fraudulently availing the benefits created for genuine SC/ST persons thereby playing fraud on the entire deprived sections.

14.65. The Co-ordinate Bench of this Court in ***Sri Satish Choudappa Honnali vs. The State Of Karnataka***³³, more particularly para nos. 3 and 4 thereof, which are reproduced hereunder for easy reference:

3. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the submission of learned AGA. Wherever a certificate of social status is obtained in violation of law or by playing fraud or is granted by mistake, ordinarily proceedings are permissible under the provisions of the 1990 Act and the Rules promulgated thereunder, subject to all just exceptions. Learned Single Judge keeping this mind has rightly reserved liberty to the Authorities concerned.

4. The submission of learned Senior Advocate appearing for the appellant that once the Validity Certificate is issued, never there can be any enquiry in any circumstance, appears to be too broad proposition of law. One immediate example for faltering such a broad statement is

³³ W.A. No.587/2023



the ground of fraud. The Apex Court in S.P.CHANGALAVARAYA NAIDU vs. JAGANNATH, (1994) 1 SCC 1, has observed that fraud vitiates everything. If a certificate of social status is secured by playing fraud, the same can be rescinded in an appropriate proceeding by the jurisdictional authorities. Therefore, the Validity Certificate cannot be construed as a China Wall that prevents any action being taken.

14.66.By placing reliance on **Satish Choudappa**

Honnali's case, his submission is that despite the issuance of a validity certificate, the matter is open to scrutiny and inquiry under certain exceptional circumstances such as fraud and a caste validity certificate cannot be construed as a China Wall that prevents any further action for mala fide acts. The Petitioner having fraudulently obtained and illegally in use of reservation benefits is an essential ground to impugn the validity certificate issued by the DCVC in his favour.

14.67.Based on all the above, he submits that the appeal filed by respondent No.9 is maintainable. The notice of enquiry which has



been issued is proper and correct. It is for the petitioner to appear before the concerned authorities and place the necessary facts and documents on record which is considered by the Appellate Authority. On all the above grounds, he submits that the above petition is required to be dismissed.

15. Heard Sri. Ameet Kumar Deshpande, learned Senior Counsel appearing for the petitioner, Sri. C. Jagadish, learned counsel appearing for respondents No.1 to 8 and Sri. Aditya Narayan, learned counsel appearing for Respondent No.9. Perused papers.
16. The points that would arise for the consideration of this Court are:
 1. **Can Respondent No.9 being a third-party to the earlier appeal, file an appeal under Section 4D of the Act of 1990, and a notice of enquiry be issued in furtherance thereof, in the background of the earlier appeal having been withdrawn by the earlier appellant therein?**



2. Can Respondent No. 9 be said to have *locus standi* to file the appeal under section 4D on the ground that he is a contestant in the election to be Member of Legislative Assembly for Aurad constituency or would he have to separately file an election petition challenging the election of the petitioner?
3. Whether the Petitioner can maintain the present writ petition challenging a show cause notice or a notice of enquiry?
4. To maintain a valid appeal under Section 4D of the Act of 1990, what is the prescribed period of limitation that would be applicable thereto?
5. On account of the earlier order passed by the DCVC, and the earlier appeal filed having been withdrawn, would the present appeal filed by Respondent No. 9 be barred by the principle of *Res Judicata* having attained finality, and in that regard amount to an abuse of the legal process by initiating repeated proceedings?
6. Would Respondent No.2 be regarded as *Functus Officio* on account of the earlier appeal having been withdrawn, and thus estopped from adjudicating on the fresh appeal?



- 7. Whether a person born in a caste or community, which is not notified as a scheduled tribe or scheduled caste in the state of birth, upon migration to another state, wherein that caste or community is notified as a scheduled caste or scheduled tribe, be entitled to the benefit granted to such scheduled caste or scheduled tribe in the state to which the person has migrated to?**
- 8. Even if an election petition were to be filed, could the election tribunal, be empowered to decide on the validity or otherwise of the caste certificate under the Karnataka Scheduled Caste, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, Etc.) Act, 1990 or would it have to be done by the authorities as constituted under the Act of 1990?**
- 9. In the present case, can this Court go into the aspect of validity or otherwise of the caste certificate of the Petitioner or would it have to be left to the concerned authority under the Act of 1990?**
- 10. Can the High Court consider the disputed question of facts and allegations of fraud in the present writ petition or would it have to be decided by the concerned authority under the Act of 1990?**
- 11. Whether the doctrine of merger would apply in the instant case?**



12. Whether this Court can intercede and adjudicate upon the impugned notice?

13. What order?

17. I answers above points are as under;

18. **Answer to the points No.1 and 2: Can Respondent No.9 being a third-party to the earlier appeal, file an appeal under Section 4D of the Act of 1990, and a notice of enquiry be issued in furtherance thereof, in the background of the earlier appeal having been withdrawn by the earlier appellant therein?**

And

Can Respondent No. 9 be said to have *locus standi* to file the appeal under Section 4D on the ground that he is a contestant in the election to be Member of Legislative Assembly for Aurad constituency or would he have to separately file an election petition challenging the election of the petitioner?

16.1 The contention of Sri. Ameet Kumar Deshpande, learned Senior Counsel appearing for the petitioners is that respondent No.9 was not a party to the earlier proceedings, more so the appeal which had been filed under Section 4D of the Act of 1990, and therefore the



question of the Respondent No.9 filing a fresh appeal under Section 4D would not arise. The earlier appeal filed by Sri.Shankarrao Doddi has been withdrawn, and hence no fresh appeal under Section 4D could be filed.

16.2 By relying on Section 4D, his submission is that it is only a person who is aggrieved by an order made by the Verification Committee under Section 4C that can file an appeal under Section 4D. The earlier appeal filed by Sri.Shankarrao Doddi under Section 4D having been withdrawn, he having been the aggrieved party, Respondent No.9 cannot be said to be either the aggrieved party nor could he file the present petition.

16.3 The submission of Sri. C.Jagadish, learned counsel for the State is that Sri. Shankarrao Doddi having challenged the order passed by DCVC in a Writ Petition in WP No.58264 of 2017, the said writ petition came to be



dismissed, reserving liberty to Sri. Shankarrao Doddi to approach the Appellate Authority under Section 4D.

16.4 He having filed the said appeal, his right to file the said appeal had been challenged by the petitioner in WP No.201341 of 2018, which came to be disposed again reserving liberty to Sri.Shankarrao Doddi to file an appeal under Section 4D. An appeal having been filed by Sri. Shankarrao Doddi under Section 4D and he withdrew the said appeal. The Appellate authority being of the considered opinion that the withdrawal was bad, imposed a cost of Rs.1,00,000/-.

16.5 Thus, the submission of Sri. C.Jagadish, learned counsel in this regard is that the mere withdrawal of the appeal would not put an end to the right of any other aggrieved person like that of Respondent No.9. The order of the DCVC dated 20.11.2017 not having stood the



rigour of an appeal, Respondent No.9 cannot be prevented from filing an appeal in the background of there being no finality to the proceedings which had been arrived at.

16.6 Similarly, the submission made by Sri. Aditya Narayan, learned counsel for Respondent No.9-Appellant, is that if such a contention were to be accepted, then Respondent No.9 would be left with no other option and/or remedy. It is in this background, the above points would have to be addressed.

16.7 It is not in dispute that the petitioner claiming the benefit of belonging to the Scheduled Tribe Category had contested the elections for the year 2008, 2013, 2018 and thereafter 2023, on the basis of the certificate issued by the Tahasildhar that he belonged to the Scheduled Tribe Category. When the petitioner contested the election in the year 2013, Sri.Shankarrao Doddi had contended that the certificate



obtained by the petitioner was not proper and as such had challenged the certificate. The matter having been referred to the DCVC, the DCVC had issued a certificate on 20.11.2017 that he belonged to the 'Lambani' caste and therefore was entitled to the Schedule Tribe Certificate. The further aspects of the challenge made thereto have been mentioned hereinabove.

16.8 It is further not in dispute that Respondent No.9 is a contestant to the Aurad Constituency of the Legislative Assembly of Karnataka. It is the very same constituency as regards which the Petitioner also had contested. Respondent No.9 is also claiming the benefit of the Schedule Caste Category. The contention of Respondent No.9 is that, if the petitioner were to be denied the benefit of the Scheduled Caste Certificate for the aforesaid reasons, the Aurad Constituency being a reserved constituency for



Scheduled Castes, would result in the petitioner being disentitled to contest the elections therein and as such, the same would directly and substantially affect the rights of Respondent No.9.

16.9 Sri. Ameet Kumar Deshpande, has relied upon the decision in ***Ayaaubkhan Narkhan Pathan's*** case to contend that Respondent No.9 is required to be treated as a third-party stranger by further contending that the Hon'ble Apex Court in ***Ayaaubkhan Narkhan Pathan's*** case has held that the Court must maintain a strict vigilance to ensure that there is no abuse of the process of Court and meddlesome bystanders ought not to be provided a forum to agitate their alleged grievances, when there are no such grievances.

16.10 I am unable to accept the submission of Sri. Ameet Kumar Deshpande, learned Senior Counsel in this regard, inasmuch as that was a



decision where the Hon'ble Apex Court held that a stranger cannot be permitted to meddle in any proceedings, unless he satisfies the Authority/Court that he falls within the category of aggrieved persons. Though the Hon'ble Apex Court has held that strangers cannot be permitted to meddle in the proceedings, an exception has also been carved out by the Hon'ble Apex Court that if a person were to satisfy that he falls within the category of an aggrieved person, he could be permitted to agitate his rights.

16.11 In the present matter, as referred to above, Respondent No.9 is also a contestant for the reserved Constituency of Aurad and as rightly contended by Sri.Aditya Narayan, learned counsel in the event of the Caste Certificate of the petitioner being set aside, then the petitioner would not be entitled to participate in the election and as such, the very act of the



petitioner contesting in the election would make Respondent No.9 aggrieved by such contesting. And as such, Respondent No.9 cannot be said to be a person who is not aggrieved by the validity certificate issued by the DCVC.

16.12 Looked at from another angle, if the said validity certificate had not been challenged by Sri. Shankarrao Doddi, it could not be said that Respondent No.9 did not have any grievance or was not an affected party. On the face of the record, Respondent No.9 being a co-contestant with the petitioner, such contest would not have happened if the petitioner did not have a Caste Validity Certificate indicating him to belong to the Scheduled Caste Category.

16.13 Therefore, if the petitioner were to be contesting in a reserved constituency on the basis of a false certificate obtained by him, I am of the considered opinion that Respondent No.9 could not be said to be a third-party or a



stranger, but would have to be considered to be an aggrieved party by the very fact of the petitioner contesting to a reserved constituency on the basis of a false reservation certificate. Thus, the decision in ***Ayaaubkhan Narkhan Pathan's*** case would not favour the petitioner but would actually favour Respondent No.9, in my considered opinion.

16.14 Sri. Ameet Kumar Deshpande has also relied upon the decision in ***R.S.Mahadev's*** case which in turn relied upon ***Ayaaubkhan Narkhan Pathan's*** case. This decision also in my considered opinion would not be attracted to the present facts. ***R.S. Mahadev's*** case was rendered in the background of the appellant not being a person who had applied to the post to which the person who had obtained the Caste Certificate had applied and in that background, the Division Bench of this Court came to a



conclusion that such a person was not an aggrieved party.

16.15 In the present case, at the cost of repitition, it would again have to be noticed that the Respondent No.9 is a rival contestant to the Aurad Constituency where the petitioner had applied to contest in an election. Thus, the decision in ***R.S.Mahadev's*** case would also not be applicable.

16.16 In the second round of litigation, as adverted to *Supra* after the withdrawal of the appeal filed by Sri. Shankarrao Doddi, Sri. Ravindraswamy and __Sri. Vijayakumar had filed a Revision Petition under Section 4F of the Act of 1990, the same having been dismissed came to be challenged by Sri. Ravindraswamy in WP No.225917 of 2020, when the single judge held that the Revision Petition is maintainable, it came to be challenged by the petitioner in WA No.200031 of 2022 and



WA No.200032 of 2022 and the Division Bench of this Court vide order dated 13.01.2023 had held that, an appeal under Section 4D being the remedy available, a revision under Section 4F was not maintainable.

16.17 A challenge having been made before the Hon'ble Apex Court in SLP.C. No.7747 of 2023, the said SLP also came to be dismissed. The finding of the Division Bench in its order dated 13.01.2023 in WA No.200032 of 2022 is that against the DCVC's order only an appeal under Section 4D was maintainable and therefore, the attempt made by Sri.Ravindraswamy and Sri.Vijayakumar to challenge the order of the Tahasildhar dated 04.02.20213 by filing a revision was not permissible and that the Revision Petitions were not maintainable.

16.18 The Division Bench of this Court did not hold that an appeal was not maintainable but has in fact held that an appeal was maintainable and a



revision was not maintainable and in that background, allowed WA No.200031 of 2022 and WA No.200032 of 2022. The said order came to be challenged by Sri.Ravindraswamy, but was not challenged by the petitioner. Hence, the finding of the Division Bench of this Court, that an appeal was maintainable, continues to be applicable to the petitioner.

16.19 Be that as it may, even otherwise what was stated by the Division Bench was a reiteration of the law, in as much as an order passed by the DCVC under Section 4C could only be appealed under Section 4D and any person aggrieved thereafter could file a Revision Petition.

16.20 This Court in ***Vageesh's case***, has also held that if a person is an aggrieved person, then he would come within the ambit of Section 4D. The Hon'ble Apex Court in ***M.V. Dabholkar's*** case (Supra), has held that the meaning of the



words a person aggrieved may vary according to the context of the statute, that a more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality, the Hon'ble Apex Court while dealing with the meaning of the word 'person aggrieved' under Section 37 and 38 of the Bar Council of India Act, came to a conclusion that a meaning of wide import should be given and no restricted interpretation should be given to those words. It further held that a person who has a genuine grievance because an order has been made which prejudicially affects his interest would make such person an aggrieved person.

16.21 The Hon'ble Apex Court again in **A. Subash Babu's** case held that the concept of an aggrieved person is an elastic and an elusive concept which cannot be confined within the bounds of rigid, exact and comprehensive



definition, and meaning should be given to the words in such a way as to provide a remedy to an aggrieved person.

16.22 If these factors are taken into consideration, it cannot be said that Respondent No.9 is a third-party in the true sense of the term. Though Respondent No.9 was not a party to the earlier appeal or the earlier proceedings filed by Sri. Shankarrao Doddi and Sri. Ravindraswamy as also Sri. Vijaykumar, Respondent No.9 is now a rival contestant for the reserved assembly seat of Aurad.

16.23 The fact of withdrawal of the earlier appeal by Sri.Shankarrao Doddi has been dealt with briefly above. The said withdrawal happened in the third round of litigation inasmuch as the certificate having been issued by Tahasildhar was challenged by Sri.Shankarrao Doddi in a writ petition when this Court reserved liberty to Sri.Shankarrao Doddi to file an appeal under



Section 4D. Sri.Shankarrao Doddi having filed an appeal under Section 4D in pursuance which liberty was reserved, on account of the petitioner himself contending that a writ petition is not maintainable but an appeal under Section 4D was to be filed.

16.24 Shockingly, the petitioner challenged the filing of the appeal by filing a writ petition contending that the appeal under Section 4D was not maintainable, that writ petition came to be dismissed and thereafter an appeal had been filed by Sri.Shankarrao Doddi he withdrew the same as regards which cost of Rs.1,00,000/- (one lakh) was imposed.

16.25 The sequence of events which has been narrated above, would indicate that the stand of the petitioner has been completely *mala fide*. On one ground or the other, the petitioner had sought to thwart the actions on part of Sri. Shankarrao Doddi. Finally, Sri. Shankarrao



Doddi is stated to have withdrawn the appeal filed under Section 4D, despite a cost of Rs.1,00,000/- having been imposed, which to my mind does not inspire any confidence as regards the conduct of the petitioner. It appears that the petitioner has filed various proceedings to thwart the legal remedies of Sri. Shankarrao Doddi and finally prevailed upon Sri. Shankarrao Doddi to withdraw the appeal filed under Section 4D.

16.26 Thus, the challenge made to the Caste Certificate was not addressed or answered either in the writ petition or the appeal under Section 4D. The challenge made was withdrawn by Sri. Shankarrao Doddi, merely because Sri. Shankarrao Doddi who is a third party insofar as Respondent No.9 is concerned having withdrawn the appeal, the same cannot come in the way of Respondent No.9 agitating his own rights. As such, the withdrawal of the appeal by



Sri. Shankarrao Doddi cannot be said to come in the way of Respondent No.9 filing an appeal under Section 4D or affect his independent rights accrued on the ground of being a co-contestant to the elections against the petitioner.

16.27 The further contention urged by Sri.Ameet Kumar Deshpande, learned Senior Counsel appearing for the petitioner is that no notice of enquiry could be issued on an appeal having been filed under Section 4D. Section 4D has been reproduced hereinabove which would categorically indicate that any person aggrieved by an order passed by the Verification Committee under Section 4C, may within 30 days from the date of receipt of the order, file an appeal before the concerned authority and in terms of Sub-section (2) of Section 4D the Appellate Authority shall after giving to both



the parties an opportunity of being heard, pass such orders in appeal as it deems fit.

16.28 Thus, it is in pursuance of the powers vested in the Appellate Authority that a notice for enquiry has been issued by the Appellate Authority. Having held that the appeal filed by Respondent No.9 under 4D is maintainable the powers of the Appellate Authority are those that are provided for under the statute more particularly in Section 4E, wherein the Tahasildhar and Verification Committee enjoy the powers of a Civil Court. Therefore, in my considered opinion the notice of enquiry which has been issued by the Appellate Authority in pursuance of the validly instituted appeal by Respondent No.9 cannot be found fault with.

16.29 In that view of the matter, I answer PointNos.1 and 2 by holding that Respondent No.9 being a rival contestant to a reserved constituency cannot be said to be a third-party to the



dispute relating to the Caste Certificate of one other contestant to the same constituency like the petitioner herein.

16.30 An earlier appeal challenging such a Caste Certificate having been withdrawn would not bar the claim of the present contestant like Respondent No.9 on validly having instituted an appeal under Section 4D of the Act of 1990, and hence the Appellate Authority is well within its rights to issue a 'notice of enquiry'.

19. **Answer to point No.3: Whether the Petitioner can maintain the present writ petition challenging a show cause notice or a notice of enquiry?**

19.1. The submission of Sri. Ameet Kumar Deshpande, learned Senior Counsel is that there being several rounds of litigation earlier filed by certain other parties, the Caste Certificate issued in favour of the petitioner having been challenged in an appeal filed under Section 4D, the said appeal having been



withdrawn, no show cause notice or notice of enquiry could be issued to the Petitioner.

19.2. In this regard, he relies upon the decision of the Hon'ble Apex Court in ***Vicco Laboratories's*** case to contend that the show cause notice is issued without jurisdiction or is an abuse of the process of the Court, and in that the writ petition would be maintainable. The operative words of the said judgement of the Hon'ble Apex Court is that the show cause notice is required to be issued without jurisdiction or is an abuse of the process of law.

19.3. Insofar as jurisdiction is concerned, Section 4D which has been reproduced hereinabove clearly and categorically provides for the power of the Appellate Authority to issue notice, provide an opportunity of being heard to both the parties and thereafter pass an order. Thus, the Appellate Authority who has issued the



impugned notice has the jurisdiction to do so and it is for the concerned to reply to the same.

19.4. Insofar as the abuse of the process of law is concerned, in this regard, the submission of Sri. Ameet Kumar Deshpande, learned Senior Counsel is that the earlier appeal under Section 4D having been withdrawn, another appeal under Section 4D filed by Respondent No.9 would not be maintainable, Appellate Authority ought not to have issued a show cause notice in that regard, the filing of the appeal in itself is an abuse of law which ought not to have been entertained by the Appellate Authority.

19.5. This aspect of whether Respondent No.9 could maintain an appeal under Section 4D will be dealt with in detail subsequently, suffice it to say that if an appeal is filed by an aggrieved party, then it cannot be said to be an abuse of the process of law under Section 4D.



19.6. The other decision relied upon by Sri. Ameet Kumar Deshpande, learned Senior Counsel is that of **Whirlpool Corporation** by relying on which he submits that the present writ petition is maintainable, since the same is filed for protection of the fundamental right of the petitioner in contesting the elections, and in that regard the impugned proceedings are wholly without jurisdiction.

19.7. Insofar as jurisdiction is concerned, I have dealt with it above while dealing with the decision of the Hon'ble Apex Court in ***Vicco Laboratories' case***. The Appellate Authority therefore would have jurisdiction and would not come under the mischief sought to be prevented by the decision of the Hon'ble Apex Court in ***Whirlpool Corporation's*** case.

19.8. As regards fundamental rights, the petitioner does not have a fundamental right to contest, the said right is a right created under a statute



and it is the rights as per the statute which could be exercised by the petitioner and not otherwise.

19.9. The statutes among others which would be applicable are the Representation of the People Act, 1950 and the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) Act, 1990 and as such the petitioner would have to comply with the requirements under those enactments. Thus, the right to contest an election cannot be traced to Part-III of the Constitution of India and as such the claim in this regard made by Sri.Ameet Kumar Deshpande, learned Senior counsel would also have to be rejected.

19.10. In that view of the matter, I answer point No.3 by holding that the Appellate Authority having the right to issue a show cause notice, it is but required for the petitioner to reply to the same



and stand the rigour of the appeal under Section 4D.

20. **Answer to Point No.4: To maintain a valid appeal under Section 4D of the Act of 1990, what is the prescribed period of limitation that would be applicable thereto?**

20.1. The submission of Sri. Ameet Kumar Deshpande, learned Senior Counsel appearing for the petitioner is that in terms of Sub-section (1) of Section 4D, any aggrieved person of an order passed under Section 4C is required to file an appeal within 30 days from the date of receipt of the order. Thus, he submits that the order under challenged being an order passed under Section 4C dated 20.11.2017 an appeal ought to have been filed by 19.12.2017. The present proceedings have been initiated on 06.11.2023 by Respondent No.9 is hopelessly barred by limitation. There being a lapse of more than six years from the date on which the order was passed, the First Appellate Authority



ought to have rejected the appeal in *limine* without causing any notice on the petitioner.

20.2.His further submission in this regard is that even a challenge made to the said order by Sri.Shankarrao Doddi was withdrawn on 07.05.2018, if Respondent No.9 was aggrieved by such withdrawal, Respondent No.9 ought to have filed an appeal within 30 days from 07.05.2018 that is by 06.06.2018. The same also not having been done, the present proceedings having been filed 5 years thereafter is barred by limitation.

20.3.Lastly, he submits that one Sri. Ravindraswamy and Sri. Vijay Kumar having filed a Revision Petition under Section 4F of the Act of 1990, the said Revision Petition having been allowed by the writ Court by a single judge came to be set aside by the Hon'ble Division Bench on 13.01.2023 and confirmed by the Hon'ble Apex Court on 01.05.2023.The present proceedings



having been filed much thereafter are also barred by the law of limitation.

20.4.The submission of Sri. C. Jagdish, learned counsel is that though Section 4D contemplates an appeal to be filed within 30 days, the same would have to be taken into consideration from the date of knowledge of the order and not from the date of the order itself and apart therefrom, he submits that it is only when a person is aggrieved by an order could the same be challenged.

20.5.Insofar as knowledge, he submits that that is for Respondent No.9 to establish. However, insofar as Respondent No.9 being aggrieved he submits that Respondent No.9 having contested the elections only in the year 2023 as a rival candidate to the petitioner, it is only then could Respondent No.9 be said to be aggrieved by a false or fraudulent Caste Certificate issued to the petitioner. Thus, he submits that the



appeal filed by Respondent No.9 from the date of knowledge can be said to be within time.

20.6.His further submission as a special counsel to protect the interest of persons belonging to Schedule Caste and Schedule Tribe category is that if there is any fraud perpetuated by a person claiming to belong to the Schedule Caste or Schedule Tribe category and a challenge is made thereto, this Court ought to be liberal in condoning any delay since it is in the interest of the depressed category, more particularly the Schedule Caste or Schedule Tribe Category which is required to be protected both internally and externally.

20.7.Internally in as much as from persons who falsely claim to belong to the said category and corner the benefits and externally against persons who do not belong to the category but seek to oppress persons belonging to the aforesaid categories.



20.8.Sri. Aditya Narayan, learned counsel appearing for Respondent No.9, would also reiterate the submission made by, Sri. C. Jagdish and submit that Respondent No.9 came to know of the earlier proceedings only when Respondent No.9 contested in the said elections. Even otherwise, it is only when the petitioner contested against Respondent No.9 on the basis of a false certificate issued, that Respondent No.9 became an aggrieved party. Thus, the limitation period of 30 days prescribed under Sub-section (1) of Section 4D would have to be taken into consideration from the date on which the aggrieved person had knowledge of the said impugned order, as also from the date on which the aggrieved person can be said to be aggrieved, so without a person being aggrieved an appeal under Section 4D is not maintainable.

20.9.In this regard, he relies upon the decision of the Hon'ble Apex Court in **Madan Lal's** case to



contend that a remedy cannot be lost for no fault of a person. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it and thus it is from the date of notice that the limitation period ought to commence.

20.10. He also relies upon the decision in ***Alamelu Ammal's*** case and submits that for the purpose of computing limitation as regards an appeal or revision, the date of communication of a copy of the order would have to be taken into consideration, Respondent No.9 not being a party to the earlier proceedings was never communicated with the said decision. Therefore, the date of the decision ought not to be taken into consideration.

20.11. By relying on ***P. Sundarmurthy's*** case, he submits that the date of the knowledge being much later than the date of the order, the



limitation would have to be considered from the date of knowledge.

20.12.If the date of knowledge were to be disputed by the other party, it is for the other party to establish that the person had knowledge much prior to the claimed date. In the present case, the matter being at the stage of issuance of show cause notice, these aspects would be dealt with by the Appellate Authority. These being the broad arguments which have been advanced, have to be considered in respect of the above point.

20.13.It is clear that Respondent No.9 was not a party to the proceedings filed by Sri. Shankarrao Doddi. He was also not a party to the proceedings filed by Sri.Vijay Kumar and Sri. Ravindraswamy. It is also clear that it is only in the year 2023 that Respondent No.9 contested the elections for the Aurad Reserve Constituency, where the petitioner had also



contested. Prior to 2023, there is nothing on record to indicate that Respondent No.9 had contested any elections against the petitioner.

20.14. Thus, the knowledge of the order on part of Respondent No.9, in my considered opinion would be irrelevant inasmuch as even if an order had been passed earlier and even if the same were to have come to the knowledge of Respondent No.9, Respondent No.9 could not have contested or challenged the said order, since Respondent No.9 would not have qualified to the status of an 'aggrieved person'.

20.15. Much arguments have been advanced as regards who is an aggrieved person, which has been considered in answer to point nos. 1&2 above, Sri. Ameet Kumar Deshpande, learned Senior Counsel having argued that Respondent No.9 is not an aggrieved person and therefore cannot maintain an appeal. The same would be equally applicable to the aspect of consideration



of limitation, inasmuch as, even if Respondent No.9 had knowledge about the order.

20.16. Respondent No.9 could not have challenged the said order, since he was not aggrieved until he had contested the election as a rival contestant against the petitioner, this having occurred in the year 2023, I am of the considered opinion that, irrespective of the date of the order under Section 4C or date of knowledge of the order on the part of Respondent No.9, Respondent No.9 being aggrieved only at the time of the electoral contest, it is thereafter that the limitation period would have to be considered.

20.17. In the present case, it has also been contended by Sri. Aditya Narayan, that it is only after the electoral contest that Respondent No.9 came to know about the earlier proceedings. Thus, this aspect would also have to be considered by the Appellate Authority while considering the aspect of limitation. It cannot *ex-facie* be said that the



appeal filed by Respondent No.9 is barred by the law of limitation. Limitation, as is trite law, being a mixed question of law and fact would have to be decided upon by the Appellate Authority in accordance with law, more so in view of the above observations made.

20.18. Thus, I answer Point No.4 by holding that a valid appeal under Section 4D of the Act of 1990 would have to be filed within a period of 30 days from the date of the order. However, the same would also have to be qualified by holding that without the knowledge of the order, no person could challenge the order. Thus, it would be from the date of knowledge of the order that the limitation period would have to be taken into account.

20.19. There being a specific restriction under Section 4D, that is only an aggrieved party who can file an appeal, the period of limitation would have to be calculated from the date on which a



person became aggrieved and the relevant factors in relation thereto would be required to be considered.

20.20. In the event of there being no knowledge of the order prior to being aggrieved and the date of knowledge of the order came to the aggrieved party after being aggrieved upon contesting the election, it was on the date on which the aggrieved party came to know about the earlier order, which would have to be then taken into consideration for the purpose of calculation of limitation.

20.21. This being the case, I'm of the considered opinion that Respondent No.9 being aggrieved by contesting elections against the Petitioner, and knowledge of the order of the DCVC having come to light in that background, the limitation period under section 4D of the Act of 1990 would thus run from that date thereon and therefore Respondent No. 9 cannot be said to



be ex facie barred by limitation in filing an appeal against the order of the DCVC under section 4D.

21. **Answer to point No.5: On account of the earlier order passed by the DCVC, and the earlier appeal filed having been withdrawn, would the present appeal filed by respondent No.9 be barred by the principle of Res Judicata having attained finality, and in that regard amount to an abuse of legal process by initiating repeated proceedings?**

21.1.Sri. Ameet Kumar Deshpande, learned Senior Counsel has very strenuously contended that the earlier appeal by Sri.Shankarrao Doddi under Section 4D being withdrawn, the said withdrawal would constitute *res judicata* and the filing of the present appeal by Respondent No.9 is an abuse of the legal process. His submission is also that the petitioner has faced repeated enquiries. First, on account of the proceedings initiated by Sri.Shankarrao Doddi , secondly, on the basis of the proceedings initiated by Sri.Ravindraswamy and Sri.Vijay



Kumar and now for the third time, by Respondent No.9.

21.2.His submission is that the petitioner is a victim of all these actions, the petitioner cannot be forced to answer this issue about Caste Certificate on multiple occasions. The Caste Certificate has been held to be valid by the DCVC, the subsequent challenge made by Sri. Shankarrao Doddi has been withdrawn. The Revision Petition filed by Sri. Ravindraswamy and Sri.Vijay Kumar having been dismissed and confirmed by the Hon'ble Apex Court, Respondent No.9 could not have filed the present proceedings.

21.3.In this regard, he refers to the decision of the Hon'ble Apex Court in ***Gulabchand Parikh's*** case and submits that Section 11 of the CPC is not exhaustive with respect to an earlier decision. An earlier decision operating as a *res judicata* between the same parties on the same



matter in controversy, a subsequent suit would be governed under the general principle of *res judicata*.

21.4. However, any previous decision on a matter in controversy decided after full contest, or affording fair opportunity to parties to prove their case will operate as *res judicata* in respect of persons who are not parties to the earlier proceedings also. They said principle of *res judicata* would apply to proceedings under Article 226 or 32 of the Constitution of India and hence, he submits that the proceedings which came to an end by virtue of Sri. Shankarrao Doddi withdrawing the appeal would operate as *res judicata*. The dismissal of the revision petition filed by Sri. Ravind Swami and Sri. Vijay Kumar as regards the very same Caste Certificate would also operate as *res judicata*.



21.5. He relies upon the decision of this Court in ***Sri.A. Chandrasekhar*** case (Supra) and submits that there is a duty cast upon this Court to ensure that there is no abuse of the process of the Court. An issue of law can be overruled later on, but a question of fact cannot be reopened once it has been finally sealed in a proceedings *inter se* between the parties. His submission is that the doctrine of finality would have to be applied in a strict legal sense and reopening of concluded judgments of the Court would amount to an abuse of the process of the Court, and have far-reaching adverse effect on the administration of justice.

21.6. On that basis, he submits that the Appellate Authority ought to have taken into consideration that the claim made now by Respondent No.9 having already been decided earlier was not maintainable and ought to have



rejected the appeal filed by the Respondent No.9 as being barred by the *res judicata*.

21.7.The submission of Sri. C.Jagadish, learned counsel is that there is never any decision which has been rendered by any authority, the caste validation certificate having been issued by the DCVC had been challenged in a writ petition by Sri.Shankarrao Doddi. The petitioner contended that writ petition is not maintainable liberty is reserved for Sri.Shankarrao Doddi to file an appeal under Section 4D, the same came to be challenged by the petitioner by filing WP No.201341 of 2018 by contending that an appeal under Section 4D was not maintainable. The said petition came to be dismissed on 20.4.2018 in pursuance of which Sri. Shankarrao Doddi had filed an appeal under Section 4D. The said appeal was withdrawn by Sri.Shankarrao Doddi on 07.05.2018 when a cost of Rs.1,00,000/- was imposed on him.



21.8. Thus, he submits that these facts would indicate that the validity certificate which has been challenged by Sri. Shankarrao Doddi came to be withdrawn by him and there is no finding rendered by any authority under the Act of 1990 in relation thereto.

21.9. Insofar as the proceedings filed by Sri. Ravindraswamy and Sri. Vijay Kumar are concerned, he submits that they had filed a Revision Petition under Section 4F which was not accepted. Hence, a writ petition was filed by them before this Court which was accepted, challenging which a writ appeal was filed by the petitioner when the writ appeal Court held that a Revision Petition was not maintainable but an appeal under section 4D was maintainable. Thus, even in those proceedings filed by Sri. Ravindraswamy and Sri. Vijay Kumar, no finding has been rendered as regards the validity of the Caste Certificate relied upon by



the petitioner. Thus, he submits that there is no finding, final or otherwise, which has been rendered, therefore, the principles of res judicata would not apply. Similar is the submission made by Sri.Aditya Narayan, learned counsel for respondent No.9.

21.10. When these submissions and the records are considered, it is seen that though there are various proceedings which have been filed, firstly a writ petition by Sri. Shankarrao Doddi, then an appeal under Section 4D by Sri. Shankarrao Doddi, a writ petition by the petitioner, a Revision Petition by Sri. Ravindraswamy and Sri. Vijay Kumar, another writ petition before this Court by them, writ appeal by the petitioner and thereafter a special leave petition by Sri. Ravindraswamy and Sri. Vijay Kumar which came to be dismissed. The fact remains that in none of these proceedings any finding is given by any



authority or Court, as regards the validity or invalidity of the Caste Certificate relied upon by the petitioner.

21.11. The petitioner has been successful in thwarting an inquiry into the Caste Certificate, during this entire process, and it is for this reason that the conduct of the petitioner would also have to be taken into consideration. When Sri. Shankarrao Doddi had wrongly filed a writ petition challenging the validity of the Caste Certificate, the petitioner took a stand that a writ petition was not maintainable, but an appeal under Section 4D was maintainable. When Sri. Shankarrao Doddi filed an appeal under Section 4D, the petitioner took up a stand by filing a writ petition before this Court in WP No. 201341 of 2018 that the appeal under Section 4D was not maintainable.

21.12. The stand taken by the petitioner as regards both these proceedings filed by Sri. Shankarrao



Doddi clearly, categorically and unimpeachably establishes the contradictory stand on part of the petitioner, if not the malafide stand on part of the petitioner.

21.13. After dismissal of WP No. 201341 of 2018 when Sri.Shankarrao Doddi filed an appeal, the appeal was not prosecuted by Sri.Shankarrao Doddi but was withdrawn as regards which cost of Rs. 1,00,000 was imposed. The Withdrawal of the Appeal having occurred despite such cost having been imposed does not inspire confidence.

21.14. Now coming to the proceedings filed by Sri.Ravindraswamy and Sri.Vijay Kumar, for some reason, instead of filing an appeal under Section 4D, they chose to file a Revision under Section 4F which came to be rejected challenging which they had filed a writ petition before this Court, which came to be allowed and the matter remitted to the Revision Court.



21.15. This order was challenged by the petitioner in W.A.Nos.200031/2022 and WA No.200032/2022, the Division Bench of this Court came to a conclusion that a Revision Petition was not maintainable challenging a validity certificate, and it is only an appeal which is maintainable. That order having been challenged before the Hon'ble Apex Court, the Apex Court dismissed the appeal. Thus again, in those proceedings also, there is no finding either given by the Revisional authority , by a Single Judge of this Court, by the Division Bench of this Court or the Hon'ble Apex Court, as regards the validity or otherwise of the Caste Certificate of the petitioner.

21.16. Thus, in both the set of proceedings initiated by Sri.Shankarrao Doddi and that initiated by Sri.Ravind Swami and Sri.Vijay Kumar, the validity or invalidity of the Caste Certificate of the petitioner has not been decided.



21.17. Section 11 of the Code of Civil Procedure is reproduced hereunder for easy reference;

Section 11: Res judicata.

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the



purposes of this section, be deemed to claim under the persons so litigating .

¹[Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

21.18.A reading of Section 11 would indicate that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit and/or the suit in which such issue has been



subsequently raised, has been heard and finally decided by such Court.

21.19. Applying Section 11 to the present facts, it is clear that the issue involved in all the proceedings is as regards the validity or invalidity of the Caste Certificate of the petitioner.

21.20. However, there are no proceedings between the same parties i.e., petitioner and respondent No.9 earlier, inasmuch as the first set of proceedings was between the petitioner and Sri. Shankarrao Doddi, the second set of proceedings were between the petitioner and Sri. Ravindraswamy and Sri. Vijay Kumar, respondent No.9 was not a party to either set of proceedings .

21.21. Insofar as the phrase litigating under the same title, the aspect of the certificate does not relate to title, it is only the petitioner who claims under the same validity certificate to



that extent, it could probably be said that the issue being the same and claiming under the same validity certificate. Thus, the aspect of *res judicata* could be considered. But however, all these aspects are qualified by the phrase "*and has been heard and finally decided by such Court*". Thus, the issue should have been heard and finally decided by a Court.

21.22. In the present matter, as indicated supra, though the issue relates to the validity or invalidity of the Caste Certificate of the petitioner, such validity or invalidity has neither been heard nor been decided. All the earlier litigations have been fought on technicalities, and on the fringes, none of the litigations touching upon the merits of the validity or invalidity of the Caste Certificate.

21.23. Once again, the petitioner seeks to take up a technical argument of *res judicata* so as to thwart the present proceedings. I am of the



considered opinion that such an attempt cannot once again be allowed to be permitted. More so, as rightly contended by Sri. C. Jagdish, learned counsel, the Act of 1990 and the Rules of 1992 and the Reservation Contemplated under Article 15 and 16 of the Constitution are required to be protected in its true sense of the word inasmuch as this Court is vested with a duty to ensure that the persons who are entitled to the benefit of such reservation, receives such benefits without any interference from anyone whether private or governmental authority.

21.24. There is also a duty imposed on this Court to ensure that a person who is not entitled to a benefit of reservation under Article 15 or 16 in terms of the Rules and Procedures prescribed under the Act of 1990 and the Rules of 1992 does not get any such benefit which he or she is not entitled to.



21.25. Thus, the obligation and duty imposed on this Court is two fold one to ensure that the person who is entitled to get the benefit gets such benefit. The other to ensure that the person who is not entitled to the benefit, does not abuse the benefit and action is taken in relation thereto.

21.26. In that view of the matter, I am of the clear and categorical opinion that the principles of *res judicata* would not be applicable to the present case.

21.27. I answer point No.5 by holding that the earlier order passed by DCVC being challenged in a writ petition and subsequently in appeal and thereafter in a Revision Petition, there is no order passed on merits on the validity or invalidity of the said Caste Certificate. Therefore, the same would not attract the principles of *res judicata* and as such, the appeal now filed by respondent No.9 under



Section 4D challenging the validity of the Caste Certificate issued to the petitioner cannot be said to be an abuse of the legal process, nor can it be said to be repeated proceedings. It is for the appellate authority to verify and ascertain the validity or invalidity of the caste certificate.

22. **Answer to point No.6: Would respondent No.2 be regarded as *Functus Officio* on account of the earlier appeal having been withdrawn, and thus estopped from adjudicating on the fresh appeal?**

22.1.The submission of Sri. Ameet Kumar Deshpande is that respondent No.2-Appellate Authority has been rendered *Functus Officio* on account of having heard the earlier appeal, and the same having been withdrawn and as such, no appeal could be filed by respondent No.9 before respondent No.2.

22.2.This argument is again an argument in futility in as much as the appeal filed by Sri.Shankarrao Doddi had been withdrawn and the Appellate



Authority having imposed costs on Sri.Shankarrao Doddi, the order had been extracted hereinabove. It is clear that the withdrawal of the appeal was made even before a finding on merits had been rendered by Respondent No.2.

22.3.Thus, there being no order passed by Respondent No.2 on merits and the *lis* between the parties not having been considered. I am of the considered opinion that the appeal has not been decided, the appeal has only been permitted to be withdrawn. It is only after an Appellate Authority performs its duties in terms of the applicable law that the Respondent No.2 would become '*Functus Officio*'.

22.4.In the present matter, no order has been passed on merits. The appellate powers not having been exercised and the appellate duties not having been discharged, I am of the considered opinion that Respondent No.2



cannot be said to be the '*Functus Officio*', so as to contend that Respondent No.2 is estopped from adjudicating on a fresh appeal filed by Respondent No.9.

22.5.Hence, I answer point No.6 by holding that an Appellate Authority can only be regarded as '*Functus Officio*' after an order on merits is passed, if no order on merits is passed and the appeal is withdrawn, it cannot be said that the Appellate Authority is rendered '*Functus Officio*' more so when the earlier appeal had been filed by one other person and the present appeal is filed by a completely different person.

23. **Answer to Point No.7: Whether a person born in a caste or community which is not notified as a scheduled tribe or scheduled caste in the State of birth, upon migration to another State, wherein the Caste or community is notified as a scheduled caste or scheduled tribe, be entitled to the benefit granted to such scheduled caste or scheduled tribe in the State to which the person has migrated to?**



23.1.The submission of Sri. Ameet Kumar Deshpande, learned Senior Counsel is that the petitioner was born within the State of Karnataka, and within the State of Karnataka the petitioner qualifies to be a member of the Scheduled 'Lambani' Caste and as such the certificate issued by the Thasildar in the State of Karnataka would suffice.

23.2.The submission of Sri. Adithya Narayan, learned counsel appaering for Respondent No.9 is that the petitioner was not born within the State of Karnataka and a certificate issued for a caste scheduled within the State of Karnataka to the petitioner would not suffice.

23.3.In the State of Maharashtra, his father and grandfather were residents of Tondchir Village, Udgir Taluk, Latur Distrct in Maharashtra State belonging to Lambani, (Banjara community), which is denotified nomadic tribe in Maharashtra under Article 154 and 164 of the



Constitution of India. Thus, his submission is that the 'Lambani' caste not being a scheduled caste in Maharashtra State, the petitioner would not be entitled to the benefits of the 'Lambani caste' being a Scheduled Caste in the State of Karnataka.

23.4. He further contends that the family of the petitioners are not residents of Karnataka, the father of the petitioner, Mr. Bambla had married Mrs. Moti Bai of Gamsabai Tanda, Bonti village, Aurad Taluk, Bidar District and after their marriage they were residing in Maharashtra State. The petitioner is the fifth son of the said Sri. Bhamla and Smt. Moti Bai. He having completed 1st to 12th standard in Pratibha Devi Ashrama School, Silvani Border Tanda, Degalur Taluk, Nanded District, Maharashtra State.

23.5. His further submission is that the petitioner married one Smt. Sakkubai of Gumsabai Tanda,



Bidar District and they had two children. The children are studying in Thane District of Maharashtra State and the petitioner also has a residence in Thane. On that basis, he submits that the petitioner not belonging to a scheduled caste in the State of his birth cannot claim the benefit of his caste being a Scheduled Caste in the State of Karnataka.

23.6. The aspect of migration and its impact on caste has been considered on several earlier occasions. Scheduled caste has been defined under Clause 24 of Article 366, which reads as under:

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

23.7. Article 341 lays down the procedure in which a caste may be specified as a Schedule Caste by the Parliament, the said Article 341, reads as under:



341. Scheduled Castes

(1)The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification,specify the castes, races or tribes or parts of or group within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2)Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

23.8.In terms of Sub-article (1) of Article 341, the President of India has issued the Schedule Caste Order 1950, which is amended from time to time. In view of Sub-article (2) of Article 341, the list having been issued, the same cannot be amended and altered by anyone apart from the Parliament. The aspect of residence is of paramount importance insofar as determination of whether a person is a person belonging to the Schedule Caste or not .



23.9. Reference is required to be drawn to the Constitution Bench of the Hon'ble Apex Court in **Marri Chandra Shekar Rao vs Dean, Seth G.S. Medical College & Ors.**³⁴ more particularly para nos. 13 & 14 thereof, which are reproduced hereunder for easy reference:

13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Venkataramana Devaru v. State of Mysore [1958 SCR 895, 918 : AIR 1958 SC 255], where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all — to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a

³⁴ (1990) 3 SCC 130



Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited



but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.

14. *Our attention was drawn to certain observations in Elizabeth Warburton v. James Loveland [1832 HL 499] . It is true that all provisions should be read harmoniously. It is also true that no provision should be so read as to make other provisions nugatory or restricted. But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression — "in relation to that State" or "for the purposes of this Constitution" — its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are*



also given to a boy or a girl who migrates and gets deducted (sic inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non-Scheduled Castes or non-Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the Constitution.

23.10. The Hon'ble Apex Court in **Marri Chandra**

Shekhar's case has held that the expression in relation to State would become negatory, if in all States the special privileges of the rights granted to Schedule Caste or Schedule Tribes are carried forward. It will be inconsistent with the whole purpose of the scheme of reservation.

23.11. In one State, a particular Caste or Tribe may be at a disadvantage, while in the other it may not be. The preparation of the list as indicated above, it is on the basis of the residence in that particular State. At



para 23, the Hon'ble Apex Court held as under:

23. Having construed the provisions of Articles 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those Scheduled Caste and Scheduled Tribe students who get the protection of being classed as Scheduled Caste or Scheduled Tribe in the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary (sic involuntary) transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to another is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the Scheduled Castes or Scheduled Tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has or migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Castes and Scheduled Tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration.

23.12. Thus from the perusal of para 23, it is clear that the Hon'ble Apex Court has suggested



to the Parliament to consider the manner in which migration could be considered and enact a proper law in relation thereto.

23.13. Where a person belonging to caste or tribe specified for the purpose of being constitutionally Scheduled Caste or Scheduled Tribe in relation to State-A migrates to State-B will that person be entitled to claim the privileges when it is admissible to the persons belonging to Schedule Caste and or Schedule Tribes in State-B, is answered in the above decision in the negative.

23.14. The Hon'ble Apex Court in the case of ***Ranjana Kumari vs State of Uttarakhand***³⁵ at para nos. 4 and 5, has observed as under:

4. Two Constitution Bench judgments of this Court in Marri Chandra Shekhar Rao v. Seth G.S. Medical College [Marri Chandra Shekhar Rao v. Seth G.S. Medical College, (1990) 3 SCC

³⁵ (2019) 15 SCC 664



130 : 1 SCEC 382] and Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India [Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India, (1994) 5 SCC 244] have taken the view that merely because in the migrant State the same caste is recognised as Scheduled Caste, the migrant cannot be recognised as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench judgments in Marri Chandra Shekhar Rao [Marri Chandra Shekhar Rao v. Seth G.S. Medical College, (1990) 3 SCC 130 : 1 SCEC 382] and Action Committee [Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India, (1994) 5 SCC 244] .

5. *We, therefore, find no error in the order of the High Court to justify any interference. The appeal is accordingly dismissed.*

23.15. The Hon'ble Apex Court in the case of Action Committee vs Union of India³⁶ at para nos. 3 and 16 has observed as under:

3. *On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under*

³⁶ (1994) 5 SCC 244



clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

16. *We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to*



a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them...."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

23.16. In **Ranjana Kumari's** case, by referring to **Mari Chandra and Action Committee's** case, the Hon'ble Apex Court held that



merely because in the migrating State the same caste is recognised as scheduled caste, the migrant cannot be recognised as Scheduled Caste of a migrant State.

23.17. Thus, holding that a person of Scheduled Caste or Scheduled Tribe can take benefit of that caste or tribe only in the State of birth if the caste or tribe to which he belongs is a Schedule Caste or Schedule Tribe in the state of Birth.

23.18. If the caste or tribe in the state of Birth is not a Schedule Caste or Schedule Tribe, such person cannot take advantage of the caste being a Schedule Caste or Schedule Tribe in the state of migration.

23.19. In that view of the matter, I answer point No.7 by holding that a person born in a caste or community which is not notified as a Scheduled Caste or a Scheduled Caste in the State of birth, upon migration to



another State wherein that caste or community is notified as a Scheduled Caste or Scheduled Tribe, will not be entitled to the benefit granted to, such Scheduled Caste or Scheduled Tribe in the State to which the person has migrated to.

24. **Answer to point No.8: Even if an election petition were to be filed, could the election tribunal, be empowered to decide on the validity or otherwise of the caste certificate under the Karnataka Scheduled Caste, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, Etc.) Act, 1990 or would it have to be done by the authorities as constituted under the Act of 1990?**

24.1. The submission of Sri. Ameet Kumar Deshpande, learned Senior Counsel is that respondent No.9 could not have filed an appeal under Section 4D, if at all respondent No.9 has any grievance as regards the validity of the Caste Certificate of the petitioner, Respondent No.9 ought to have filed an election petition under the Representation of People's Act and in this regard, he submits that all the aspects and



contentions would have been considered in the election petition.

24.2.The submission of Sri.Aditya Narayan, learned counsel for respondent No.9 is that even though respondent No.9 has an option to file an election petition in the State of Karnataka. The aspect of validity or otherwise of a Caste Certificate would have to be determined, in accordance with the Act of 1990 and the Rules of 1992 thereunder, and the same cannot be determined by the Court seized of the election petition.

24.3.In this regard, he relies upon ***Bhagwati Prasad Dixit's*** case and submits that even if an election petition were to be preferred, the said Court seized of the election petition would be guided by the authority constituted under the 1990 Act to determine matters on the said question as regard to the validity of the caste certificate of a person/candidate



24.4. The authority is established under the 1990 Act, which is a special enactment being competent and empowered to do so having requisite specialized knowledge in relation thereto.

24.5. He also relies upon the decision of the Hon'ble Andhra Pradesh High Court in ***Durga Singh's*** case and submits that the election tribunal cannot go into the matters of legality and validity of the Caste Certificate of a returned candidate and the same is not a ground by itself to set aside the election of a returned candidate. The Act of 1990 providing a comprehensive framework to ascertain the validity or otherwise of the caste certificate, the same would have to be done in terms of the legal process under the Act of 1990.

24.6. By relying on ***Sri. Shiddalingappa Mallappa Abbigeri's*** case, he submits that even a Court adjudicating an election petition where a Caste Certificate has been impugned, is required to



suspend the proceedings and direct the parties to approach the DCVC for necessary orders. In the present case, the DCVC having already issued a validity certificate which is impugned, it is only the Appellate Authority under Section 4D which can consider the matter. As such, neither the Court seized of the election petition nor the DCVC can look into the matter and it is in that background that in ***Sri. Shiddalingappa Mallappa Abbigeri's*** case, that an appeal under Section 4D was filed.

24.7.As indicated supra, the classification of Schedule Caste and Schedule Tribes is made under the Constitution of India by the President. Once the classification is made, it cannot be changed except by the Parliament. This aspect would clearly and categorically establish the rigour through which, the classification of Schedule Caste and Schedule Tribes in each State has been made and any



changes thereof requiring the Parliament to do so. The sanctity of the list prepared is paramount.

24.8. There being no particular mechanism for upholding the sanctity, the Hon'ble Apex Court in **Madhuri Patil's** case laid down certain directions at para nos. 15, 16, 17 and 18 (supra)

24.9. It is in furtherance of the observation, guidelines and recommendations of the Hon'ble Apex Court that a complete overhaul of the Act of 1990 and the Rules of 1992 were made. The aspects relating to the same have been dealt with by the Hon'ble Apex Court in **Madhuri Patil's** case, where it came to a conclusion that an enquiry into the caste status would require an enquiry to be made in respect of the traditions, customs, etc., followed by such person in order to determine whether those customs and traditions are in accordance with



the customs and traditions of that particular caste or tribe. For this purpose, the Hon'ble Apex Court had directed the establishment of specialised agencies and as afore observed, Sub-section (2) of Section 4 and the various Rules were brought into effect from the year 2000, in furtherance of the recommendation made by the Hon'ble Apex Court.

24.10. The Act of 1990 and the Rules of 1992 are comprehensive ones which provide for the rights which could be exercised as also the grievance which could be redressed. It is in furtherance of that the District Caste Validation Committee has also been established and the manner in which the committee is to function has also been detailed out.

24.11. Suffice it to say, that the procedure prescribed under the Act of 1990 and Rules of 1992 are comprehensive in nature and the actions which could be taken by the authorities being in the



nature of fact-finding can be better done by those Authorities under the Act and the Rules. It is for that reason that in the various decisions referred to supra, the Hon'ble Apex Court and other Courts and this Court have categorically held that if a challenge to an election has been made where the Caste Certificate is impugned, the validity or otherwise would have to be ascertained in terms of the Act of 1990 as per the Rules of 1992.

24.12. Thus, the Court seized of the election petition, being a District Court or the like, would not have the wherewithal to conduct the detailed inquiry as required, at least at the first instance and as such, all aspects relating thereto would have to be referred to the properly constituted fora in that regard, namely the 'District Caste Verification Committee'.



24.13. Thus, I answer point No.8, by holding that even if an election petition were to be filed, the election tribunal would not be empowered to decide on the validity or otherwise of the caste certificate, the same would have to be determined by the authorities constituted under the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) Act, 1990 in terms of the Act of 1990 as also the Rules of 1992, taking into consideration all the relevant factors by causing a local inquiry in that regard.

25. **Answer to point No.9: In the present case, can this Court go into the aspect of validity or otherwise of the caste certificate of the petitioner or would it have to be left to the concerned authority under the Act of 1990?**

25.1. In view of my answer to point No.8, I answer point No.9 by holding that this Court or the court seized of the election petition can though ofcourse, determine the validity of the orders passed by the authorities under Section 4. Any



fact-finding would have to be made by the authorities under Section 4 and not by this Court or the Court seized of the election petition and hence all fact-finding tasks would have to be left to the authorities constituted under the Act of 1990.

26. **Answer to point No.10: Can the High Court consider the disputed question of facts and allegations of fraud in the present writ petition or would it have to be decided by the concerned authority under the Act of 1990?**

26.1. The aspect of fraud which is sought to be pleaded by Respondent No.9 is that the petitioner was born in Maharashtra. In the State of Maharashtra, his caste is not a Scheduled Caste, merely because his caste is a Scheduled Caste in the State of Karnataka, the petitioner cannot be entitled to the benefits granted to Scheduled Caste in the State of Karnataka.



26.2. Insofar as the point of law is concerned, the same has been answered hereinabove as regards the entitlement. But what would have to be considered is where was the petitioner born and then apply the law accordingly. The aspect of birth and the location of birth are all questions of fact, which would have to be established by both the parties before the Appellate Authority and it would not be proper for this Court to appreciate the evidence in this regard in a writ petition.

27. **Answer to point No.11: Whether the doctrine of merger would apply in the instant case?**

27.1. The aspect of Doctrine of Merger has been invoked by Sri. Ameet Kumar Deshpande, learned Senior Counsel for the petitioner on the ground that the challenge made by Sri. Ravindraswamy and Sri. Vijay Kumar having been rejected, the Single Judge having remanded the matter on challenge, the Division



Bench having set aside the finding of the single judge and holding that a Revision Petition under section 4F was not maintainable. The same having been confirmed by the Hon'ble Apex Court, it would be applicable even to this matter.

27.2. This aspect has also been dealt with hereinabove and I have come to a conclusion that the subject matter of these proceedings have not been dealt with and decided in those proceedings.

27.3. Irrespective of whether Doctrine of Merger would apply to the challenge made by Sri. Ravindraswamy and Sri. Vijay Kumar leading up to the decision of the Hon'ble Apex Court, the fact remains that what was considered there was the applicability of Section 4F, namely whether a Revision Petition was maintainable challenging the validity certificate issued by DCVC and the Division Bench on the



Hon'ble Apex Court came to a conclusion, that the same was not maintainable.

27.4.The order passed by the Hon'ble Apex Court therefore would be binding insofar as proceedings under Section 4F are concerned. As dealt with supra, the issue in question in the present matter is as regards an appeal filed under Section 4D and not a Revision under Section 4F. The maintainability of an appeal under Section 4D has also been dealt with hereinabove.

27.5.Thus, irrespective of the Doctrine of Merger being applicable to the proceedings initiated by Sri.Ravindranath Swami and Sri.Vijay Kumar, I am of the considered opinion that the orders passed therein would not have a bearing on an appeal filed under Section 4D, which would have to be dealt with independently.

28. **Answer to point No.12: Whether this Court can intercede and adjudicate upon the impunged notice?**



28.1. In view of my findings above, the challenge which has been made to the show cause notice calling upon the enquiry to be made, I am of the considered opinion that no grounds having been made out, this court need not intercede as regards the said show cause notice.

28.2. All the other arguments which have been addressed by Sri. Ameet Kumar Deshpande, Sri C. Jagdish and Sri. Aditya Narayan, have been considered and dealt with in this order. Thus, it would be for the petitioner to appear before the Appellate Authority and submit his say in the matter, which would have to be considered by the Appellate Authority and necessary orders passed in accordance with law.

29. **General Direction:**

29.1. Much has been argued in the present matter as regards the proceedings which have been filed, and that they have attained finality on behalf of



the petitioner. Much has been argued on the part of Respondent No.9, that Respondent No.9 did not have knowledge of any of those proceedings and as such could not have challenged it earlier, apart from the contention that Respondent No.9 became an aggrieved party only subsequently.

29.2. In this regard, I am of the considered opinion that the candidate while making a declaration would also have to make a declaration as regards any challenge made to any certificate of his, be it caste, education or the like. So the same could be considered by the election authorities, as also come to the knowledge of the general populace and other candidates to take any objection if they desire to do so.

29.3. Thus, I am of the opinion that the Law Commission would have to look into this aspect insofar as elections which are conducted under



the provisions of the Right to Representation Act 1951.

29.4. Insofar as the other matters, it would be for the State to prepare appropriate guidelines indicating that the contestant will have to furnish details of all the litigations pending and decided that the candidate is/was involved in both civil and criminal matters before judicial, quasi-judicial or administrative authorities so that the information is available to one and all including the voting populace, as also the rival candidates. Transparency would require all material details as regards the election to be placed for consideration before all the concerned.

29.5. A report to this effect to be filed by learned AGA within a period of six weeks from now i.e., on or before 28.04.2025



30. **Answer to point No.15: What order?**

30.1.No grounds being made out, the petition stands
dismissed.

30.2.Though the above petition is dismissed, relist
on 28.04.2025 to report compliance.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

SR/-
List No.: 48 Sl No.: 1