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dated 25-10-2013, the effect and operation of impugned order dated 16-9-2013 has been stayed.

3. Before considering the facts of the case, it would be appropriate to consider I.A. No.635/2019 filed by one Ladduram Kori, through his Counsel Shri N.S. Kirar, Advocate seeking permission to intervene. The application has been opposed by the petitioner, on the ground that he is not an aggrieved person. In reply, it is submitted by the Counsel for the intervenor that as per the guidelines dated 8-9-1997, a public notice is also required to be given by the High Power Caste Scrutiny Committee, therefore, any person can oppose the claim of the petitioner. During the arguments, it was submitted by the Counsel for the Petitioner, that Shri N.S. Kirar, Advocate, should not appear for the intervenor, as earlier Shri N.S. Kirar, Advocate had appeared on behalf of the State and he had access to the record of the Committee. The objection raised by the Counsel for the petitioner was opposed by Shri N.S. Kirar, Advocate. However, Shri N.S. Kirar did not dispute that earlier in the capacity of Govt. Advocate, he had an access to the record of the High Power Caste Scrutiny Committee. After some heated arguments, the Counsel for the petitioner, agreed that he would not raise the preliminary objection with regard to the appearance of Shri N.S. Kirar, and Shri N.S. Kirar, also agreed not to argue on behalf of the intervenor. Accordingly, I.A. No. 635/2019 for intervention is hereby dismissed.

4. By order dated 6-12-2018, this Court had imposed the cost of Rs.20,000/- on the respondents. The office report dated 11-1-2019

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(wrongly mentioned as 11-1-2018) shows that the cost was not deposited by 11-1-2019. The receipt of the cost has also not been placed on record. Thus, it is not clear that whether the respondents have deposited the cost of Rs.20,000/- after 11-1-2019 or not. Accordingly, this Court by order dated 18-2-2019 had observed that since, the cost has not been deposited therefore, the right of the respondent to defend the writ petition stands forfeited. However, by the same order, the Counsel for respondent/State was directed to produce the record of the Scrutiny Committee positively on the next date of hearing. On 12-3-2019, the entire record pertaining to the High Power Caste Scrutiny Committee was available with the Counsel for the State and since, there was an interim order staying the effect and operation of Annexure P/10 dated 16-9-2013, therefore, it was observed that it would be appropriate to hear the matter at an early date and accordingly, the office was directed to list the case for hearing on any Thursday in the month of April.

5. In spite of the clear direction of this Court, the office listed this case on 22-4-2019 (i.e., on Monday), therefore, this Court directed the office to list this case on 25-4-2019 (i.e., on Last Thursday of the month of April) and the Counsel for the State was directed to keep the original record of the proceedings available at the time of final hearing.

6. The case was taken up for hearing on 25-4-2019, then a statement was made by the Counsel for the State, that the original record is not available. The Co-ordinate Bench of this Court had already observed on 12-3-2019 that the entire record of the Committee is available with the

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Govt. Advocate, and since, the interim order is in operation, therefore, the matter shall be heard finally, and on 22-4-2019, the Counsel for the State was specifically directed to keep the record of the Committee available at the time of final hearing, but still the record of the Committee has not been produced. Surprisingly, when the record of the Committee was available on 12-3-2019 (as observed by Co-ordinate Bench in its order), then why the record is not being produced, is also not known. At this stage, it is submitted by the Counsel for the State that although the right to defend the writ petition has already been forfeited due to non-deposit of the cost, but the documents of proceedings of the Committee, filed along with the writ petition may be considered. Accordingly, the documents pertaining to the proceedings of the Committee filed along with the return of the State shall be considered.

7. Thus, it is made clear that only the documents annexed with the Writ Petition, Rejoinder and documents pertaining to the proceedings of the Committee, which have been annexed with the Return, shall be taken into consideration. Further, only those documents, which are the part of return shall be taken into consideration, which would be referred by the Petitioner.

8. Challenging the order dated 16-9-2013, it is submitted by the Counsel for the petitioner, that earlier, the Petitioner was granted a Caste Certificate dated 2-12-1999, thereby certifying that the petitioner belongs to "OBC". In the month of December, 1999, the office of President, Municipal Council, Ashoknagar was reserved for "OBC" category and the

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petitioner had also contested the said election on the strength of "OBC" certificate dated 2-12-1999, whereas on Baijnath Sahu, had also contested the election. It appears, the petitioner defeated Baijnath Sahu in the election for the post of President, Municipal Council, Ashoknagar. Baijnath Sahu, filed a writ petition No.1330/2012 before the High Court, seeking the following relief(s) :

(i) That, the respondents be directed to initiate criminal proceedings under Section 420,467,405 and 468 of the Indian Penal Code against respondent no.4 for procuring forged certificate and accordingly, he be punished.

(ii) That, the respondent no.4 be held not qualified to hold the office of the President Municipal Council, Ashoknagar reserved for "OBC" category and he be directed to vacate such office forthwith.

(iii) That, the respondent no.4 be directed to pay a heavy cost for holding office of President, Municipality Ashok Nagar for which he is not qualified.

(iv) Other relief doing justice in the matter including cost be ordered.

9. The Petition filed by Baijnath Sahu, was disposed of by this Court by order dated 12-8-2002, which reads as under :

"The grievance in this Public Interest Litigation is that respondent no.4 has been elected as President of the Municipal Council, Ashoknagar on false and fabricated caste-certificate. It is not disputed that an election-petition against respondent no.4 and a writ petition before the learned Single Judge in respect of election of respondent no.4 is also pending. However, the petitioner, who is also a lost candidate can submit objections in the election-petition and also before the Writ Court. That apart, remedy as provided under the Government Circular dated 1-8-1996, a copy of which is annexed with the writ petition as Annexure P/10, provides for enquiry and taking action in respect of the forged caste-certificate, was not availed of by the petitioner. The

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Petitioner, in case, if makes any complaint under the afaoresaid Circular of the Government the Competent Authority can take action in that regard and decide the same expeditiously.

This Public Interest Litigation is disposed of with the directions made hereinabove".

10. Thereafter, it appears that the matter was taken up by the High Power Caste Scrutiny Committee and by order dated 23-2-2004, the "OBC" certificate dated 2-12-1999 issued in favour of the petitioner was cancelled.

11. The Petitioner filed a Writ Petition No.520/2004, challenging the order dated 23-2-2004, which was allowed by this Court by order dated 3-9-2004 on the ground of lack of quorum and the matter was remanded back to the High Power Caste Scrutiny Committee for decision afresh.

12. The matter was again considered by the High Power Caste Scrutiny Committee and by order dated 11-11-2004, the "OBC" Caste Certificate of the petitioner was cancelled.

13. Accordingly, by order dated 4-3-2004, the Directorate Backward Class and Minority Welfare, Bhopal, cancelled the "OBC" certificate dated 2-12-1999 which was granted by the Tahsildar in favour of the Petitioner.

14. It appears that thereafter, the petitioner once again obtained the certificate of Scheduled Caste on 6-11-2008 (Annexure P/8).

15. By referring to the return filed by the respondents, it is submitted by the Counsel for the Petitioner that it appears that one Ramesh Kumar Itoria, Member District Congress Committee and Representative Member

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of Parliament, made a written complaint to Shri Jyotiraditya Scindia, Minister of State for Commerce and Industry, Government of India alleging that forged Caste Certificates have been obtained by various persons, including the petitioner. Shri Jyotiraditya Scindia, Minister of State for Commerce and Industry, Government of India in his turn, by letter dated 30-9-2010, forwarded the said complaint to the then Chief Minister of State of M.P. Accordingly, the matter was referred to High Power Caste Scrutiny Committee for verification of Caste Certificate of the petitioner.

16. It appears that by order dated 6-8-2013, the High Power Caste Scrutiny Committee issued notices to the petitioner, for his appearance on 12-8-2013. It was reported by the Collector Guna, that the Sub Divisional Officer was sent to the house of the petitioner, for service of notice, however, he was not in the house. The report given by S.D.O. was also annexed according to which, the Sub-Divisional Officer, Guna received the copy of the notices on 8-8-2013 and accordingly, he went to the house of the petitioner, but he was not found in the house, and the family members informed the S.D.O., that the petitioner would be available on the next day. On 9-8-2013, when the SDO again went to the house of the petitioner, then again he was not available in the house. Again on 10-8-2013, no one was found in the house, accordingly, the notice could not be served personally on the petitioner. Thereafter, the notice was read over to the relatives and neighbours and they were requested to inform the petitioner. One copy of the notice was affixed on the house and the

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signatures of the neighbourers were obtained. The entire proceedings were got videographed. SMS was sent on the mobile of the petitioner and news was also uploaded on the Facebook account of the petitioner. News was also published in the local print and electronic media. However, on 12-8-2013, the petitioner did not appear before the High Power Caste Scrutiny Committee. Seven complainants appeared against the petitioner, and therefore, their statements were recorded.

17. However, in order to give another opportunity of hearing, the High Power Caste Scrutiny Committee, decided to issue fresh notice to the petitioner and accordingly, fresh notice was issued on 7-9-2013 for service of the same through Collector, Guna, for his appearance on 16-9-2013. Again the Collector, Guna by his report dated 13-9-2013 informed that the notice was received by him on 12-9-2013. He and Tahsildar, Ashoknagar tried to contact the petitioner, but he was not available. Three attempts were made to serve the notice but every time, the same could not be served as the house was locked. Accordingly, the notice was read over to his relatives and neighbourers, and request was made to inform the petitioner. A copy of the notice was affixed on the house of the petitioner and panchnama was prepared. The entire efforts were videographed. SMS was also sent on the mobile phone of the petitioner and news was also uploaded on the Facebook account of the petitioner. Public notice was also given by beat of drums and news was also published in the newspaper. On 16-9-2013 also, the Petitioner did not appear before the High Power Caste Scrutiny Committee and accordingly, it was held that

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the entire attempt of the petitioner is to somehow keep the matter pending and accordingly, an *ex parte* final order dated 16-9-2013 was passed and the Caste certificate of Scheduled Caste dated 6-11-2008 was cancelled on the ground that the same was issued on the basis of forged documents.

Order dated 16-9-2013 reads as under :

मध्य प्रदेश शासन
अनुसूचित जाति कल्याण विभाग
(राज्य स्तरीय अनुसूचित जाति प्रमाण-पत्र छानबीन समिति)

प्रकरण क्रमांक – 11/2013-14
अनावेदक का नाम- श्री जजपाल सिंह पिता श्री गुरुमेज सिंह, अशोकनगर।

निर्णय आदेश-बैठक दिनांक 16.09.2013

माननीय उच्चतम न्यायालय द्वारा कु0 माधुरी पाटिल बनाम अपर आयुक्त, आदिवासी विकास के सिविल अपील नं. 5854/94 में पारित निर्णय दिनांक 02.09.94 ए.आई.आर. 1995 के अनुपालन में मध्य प्रदेश शासन, सामान्य प्रशासन विभाग के आदेश क्रं. एफ/1/6/आ.प्र./1 दिनांक 8 सितम्बर 1997 के द्वारा राज्य स्तर पर निम्नानुसार उच्च स्तरीय छानबीन समिति का गठन किया गया है-

- | | | | |
|----|--|---|---------|
| 1. | सचिव म.प्र. शासन अनुसूचित जाति कल्याण विभाग, भोपाल | - | अध्यक्ष |
| 2. | आयुक्त अनुसूचित जाति विकास म.प्र. भोपाल | - | सदस्य |
| | सचिव | | |
| 3. | संचालक आदिम जाति अनुसंधान संस्था म.प्र. भोपाल | - | सदस्य |
| | (जाति विषय विशेषज्ञ) | | |
| 4. | सचिव, म.प्र. अनुसूचित जाति आयोग, भोपाल | - | सदस्य |

समिति द्वारा श्री जजपाल सिंह पिता गुरुमेज सिंह अशोकनगर के 'नट' अनुसूचित जाति के संदेहास्पद जाति प्रमाण पत्र के प्रकरण की छानबीन की गई। विवेचना के मुख्य बिन्दु निम्नानुसार है-

1. मध्यप्रदेश शासन, आदिम जाति तथा अनुसूचित जाति कल्याण विभाग के पत्र क्रमांक 2670/2531 /10/4-25, दिनांक 13.12.2010 द्वारा माननीय राज्य मंत्री वाणिज्य एवं उद्योग, भारत सरकार का पत्र प्राप्त हुआ जिसके साथ श्री रमेश कुमार इटौरिया द्वारा जजपाल सिंह जज्जी के अनुसूचित जाति प्रमाण पत्र की, की गई शिकायत संलग्न थी।
 2. कार्यालयीन पत्र/अनुसंधान/नक.272/2010-11/8277 दिनांक 4.1.2011 एवं पत्र क्रमांक 9375, दिनांक 3.2.2011 द्वारा क्रमशः कलेक्टर एवं पुलिस अधीक्षक अशोकनगर का श्री जजपाल सिंह के जाति प्रमाण पत्र की जांच हेतु प्रकरण प्रेषित किया गया।
 3. कलेक्टर जिला अशोकनगर का पत्र क्रमांक/एस डब्ल्यू/9-2/8/2011/375, दिनांक 24.04.2012 द्वारा अनावेदक के जाति प्रमाण पत्र के विषय में अनुविभागीय अधिकारी (राजस्व) अशोकनगर से जांच कराकर प्रतिवेदन इस कार्यालय को प्रेषित किया गया। प्रतिवेदन के निष्कर्ष निम्नानुसार है-
- (I) कलेक्टर अशोकनगर ने अपने पत्र में प्रतिवेदित किया है कि "मैं अनुविभागीय

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अधिकारी अशोकनगर के संलग्न जांच प्रतिवेदन के आधार पर उक्त कृत्यों के लिए श्री जजपाल सिंह के आदतन फर्जी जाति प्रमाण पत्र बनवाने के आचरण को आपराधिक श्रेणी का होने से इनके विरुद्ध कठोर दण्डात्मक कार्यवाही के प्रस्ताव को उचित समझता हूँ। मैं अनुविभागीय अधिकारी (राजस्व) अशोकनगर के जांच प्रतिवेदन से पूर्णतः सहमत हूँ तथा अनुविभागीय अधिकारी अशोकनगर का संलग्न जांच प्रतिवेदन दिनांक 09/04/2012 का इस प्रकरण का मुख्य अंग माना जाए।

(II) अनुविभागीय अधिकारी के जांच प्रतिवेदन के मुख्य निष्कर्ष बिन्दु निम्नानुसार है—

(क) अनावेदक का नाम, ग्राम हिन्नौदा तहसील अशोकनगर की भूमि सर्वे क्रमांक 6, रकवा 1.443 हे० पर "सिख" दर्ज है।

(ख) अनावेदक के शैक्षणिक अभिलेख शासकीय प्राथमिक विद्यालय सिघाड़ा विकासखण्ड मुंगावली में प्रवेश क्रमांक 145, दिनांक 01.08.1969 पर कक्षा 1 में प्रवेश लिया गया है, जिसमें जाति सिख लिखाई गयी है। इसी आधार पर अनावेदक को सामान्य जाति का होने के कारण छात्रवृत्ति का लाभ नहीं दिया गया है।

(ग) तहसीलदार मुंगावली के पत्र दिनांक 26.09.2011 द्वारा श्री जजपाल सिंह के सिजरा खानदान में इनके बाबा बूढ़ सिंह पुत्र नत्था सिंह के पुत्र गुरुमेज सिंह के पुत्र जजपाल सिंह अंकित है। ग्राम सिघाड़ा के जिल्द बन्दोबस्त 2013 में सर्वे नम्बर 72 पर श्री जजपाल सिंह के बाबा बूढ़ सिंह पुत्र नत्था सिंह जाति "सिख" दर्ज है।

(घ) कार्यालय प्राचार्य, शासकीय उत्कृष्ट बालक उच्चतर माध्यमिक विद्यालय अशोकनगर के पत्र दिनांक 08.04.12 के अनुसार स्कॉलर रजिस्टर के आधार पर श्री जजपाल सिंह (जज्जी) की जाति सिख दर्ज है।

(ङ.) कार्यालय कलेक्टर, जिला अशोकनगर के शस्त्र लाईसेंस रजिस्टर क्रमांक 13/4 पर जजपाल सिंह पुत्र गुरुमेज सिंह जाति "सिख" सामान्य निवासी अशोकनगर अंकित है।

च) कलेक्टर अशोकनगर द्वारा यह निष्कर्ष अंकित किया गया है कि " अनावेदक द्वारा न्यायालय अनुविभागीय अधिकारी अशोकनगर के प्रकरण क्रमांक 31 वी-121/08-09, दिनांक 06.11.2008 से नट अनुसूचित जाति का जाति प्रमाण पत्र पूर्ण रूप से कूटरचित अवैधानिक एवं फर्जी दस्तावेजों के आधार पर प्राप्त किया गया है साथ ही अनावेदक चुनाव के समय राजनैतिक पद हासिल करने के उद्देश्य से फर्जी तरीके से कूटरचित दस्तावेजों के आधार पर आरक्षण का गलत लाभ लेने के लिये आवश्यकतानुसार कभी अनुसूचित जाति का एवं कभी पिछड़ा वर्ग की जाति का प्रमाण पत्र बनवाने के आदी है तथा उक्त जाति प्रमाण पत्र अवैधानिक रूप से अपनी राजनैतिक महत्वाकांक्षा पूर्ण करने के उद्देश्य से अनुसूचित जाति के योग्य एवं पात्र उम्मीदवारों के अधिकारों के हनन करने के लिये उक्त कृत्य किया गया है। शिकायत के संदर्भ में प्राप्त तथ्यात्मक प्रतिवेदन के संलग्न दस्तावेजों से स्पष्ट है कि श्री जजपाल सिंह पुत्र गुरुमेज सिंह निवासी पंजाबी कॉलोनी, विदिशा रोड, अशोकनगर द्वारा गलत, फर्जी एवं कूटरचित जाति प्रमाण पत्र संबंधी दस्तावेज प्रस्तुत कर अनुचित लाभ लिया गया है।

4. पुलिस अधीक्षक, अशोकनगर के पत्र क्रमांक/पु.अ./अ.नगर/स्टेनो/621 दिनांक 13.07.2012 द्वारा अनावेदक के जाति प्रमाण पत्र का जांच प्रतिवेदन आयुक्त, अनुसूचित जाति विकास को प्रेषित किया गया। प्रतिवेदन के साथ एस.डी.ओ.पी. द्वारा की गयी जांच के अभिलेख संलग्न हैं। प्रतिवेदन के निष्कर्ष निम्नानुसार है :-

(I) अनावेदक की सिजरा वंशावली में अंकित उनके रिश्तेदारों की ग्राम सिघाड़ा में कृषि भूमियां हैं। खसरा अभिलेख में उनकी जाति सिख दर्ज है। अनावेदक के पिता के भादौन की कृषि भूमि में खसरा में भी उनकी जाति सिख दर्ज है। कलेक्टर अशोकनगर के प्रतिवेदन में अंकित तथ्यों के अनुसार ही राजस्व अभिलेख में अनावेदक एवं उनके निकटतम रिश्तेदारों की जाति सिख अंकित है इसकी पुष्टि पुलिस अधीक्षक द्वारा भी की गयी है।

(II) पुलिस अधीक्षक के प्रतिवेदन में अनावेदक के एन.पी बोर रायफल लाईसेंस नम्बर 53/4 में जाति सिख (सामान्य) अंकित होने का उल्लेख किया गया है।

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(III) अनावेदक शासकीय नेहरू कालेज अशोकनगर के स्थानीय प्रबंध समिति के सदस्य रह चुके हैं। जिसमें इनकी जाति "संधू" दर्ज है। वर्ष 1999 में अनावेदक द्वारा कॉलेज छोड़ने के प्रमाण पत्र में अपनी जाति "कीर" लिखाई गयी है। श्री जजपाल सिंह के इसी तरह जाति बदलने के कारण इनके खिलाफ थाना कोतवाली अशोकनगर में अपराध क्रमांक 161/2010, धारा 420, 467, 458 471, 120बी भादवि पंजीबद्ध किया गया था। इस अपराध में अग्रिम जमानत कराने हेतु अनावेदक ने सत्र न्यायाधीश अशोकनगर में प्रकरण क्रमांक 135/2010 "प्रथम प्रतिभूति आवेदन" में अपने नाम के आगे संधू लिखा है। इस मामले में अपर सत्र न्यायाधीश अशोकनगर ने अनावेदक का अग्रिम जमानत आवेदन निरस्त कर दिया था।

(IV) श्री जजपाल सिंह पुत्र श्री गुरुमेज सिंह संधू निवासी पंजीबी कालोनी आशोकनगर की जाति सिख व उपजाति संधू है जो कि सामान्य वर्ग के अंतर्गत आती है। अतः इनके द्वारा बनाये गये "कीर एवं नट" जाति से संबंधित प्रमाण पत्रों को निरस्त किये जाने एवं संबंधित के खिलाफ वैधानिक कार्यवाही किये जाने की अनुशंसा की गयी है।

5. श्री जजपाल सिंह (जज्जी) को न्यायालय तहसीलदार अशोकनगर के प्रकरण क्रमांक 143 वी-121/99-2000 के द्वारा कीर जाति अन्य पिछड़ा वर्ग का प्रमाण पत्र जारी किया गया था। इस प्रमाण पत्र को पिछड़ा वर्ग कल्याण की उच्च स्तरीय छानबीन समिति की बैठक दिनांक 11.11.2004 में निरस्त किया गया है। पिछड़ा वर्ग छानबीन समिति का निर्णय इस प्रकार है :-
"श्री जजपाल सिंह संधू द्वारा ही पूर्व में स्वयं को नट (बाजीगर) बताकर अनुसूचित जाति का प्रमाण पत्र प्राप्त किया गया। बाद में राजनैतिक लाभ के लिये स्वयं को "कीर" बनाकर पिछड़ा वर्ग जाति का प्रमाण पत्र प्राप्त किया गया। अतः श्री जजपाल सिंह संधू को तहसीलदार अशोकनगर द्वारा प्रदत्त "कीर" पिछड़ा वर्ग जाति का प्रमाण पत्र निरस्त किया जाता है।"
6. मुख्य कार्यपालन अधिकारी जनपद पंचायत अशोकनगर के पत्र दिनांक 07.04.2010 द्वारा थाना प्रभारी अशोकनगर को अवगत कराया गया कि अनावेदक वर्ष 1994 के जनपद पंचायत निर्वाचन क्षेत्र क्रमांक 15 जो अनारक्षित था, से सिख (सामान्य) के आधार पर चुनाव लड़े थे। मण्डी समिति के कृषक सदस्य के निर्वाचन हेतु अनावेदक द्वारा नाम निर्देशन पत्र दिनांक 20.04.1999 को रिटर्निंग ऑफिसर मण्डी निर्वाचन अशोकनगर को प्रस्तुत घोषणा पत्र में स्वयं को सामान्य जाति का घोषित किया गया था।
7. अनावेदक को कार्यालयीन पत्र क्रमांक/अनुसंधान/न.क्र.11/2013-14/3425 दिनांक 06.08.2013 द्वारा पुलिस के माध्यम से की गयी जांच का प्रतिवेदन संलग्न प्रेषित करते हुये दिनांक 12.08.2013 को आयोजित छानबीन समिति की बैठक में पक्ष प्रमाणों के साथ उपस्थित होने हेतु "कारण बताओं सूचना पत्रों" प्रेषित किया गया।
8. उक्त कारण बताओ सूचना पत्र की प्रति कलेक्टर अशोकनगर को अनावेदक को तामील करने के लिये पृष्ठांकित की गयी। साथ ही सामान्य प्रशासन विभाग द्वारा निर्धारित प्रक्रियानुसार छानबीन समिति की बैठक की सूचना के प्रचार प्रसार हेतु भी कलेक्टर को लिखा गया।
9. कलेक्टरी, अशोकनगर द्वारा उनके पत्र दिनांक 11.08.2013 के माध्यम से कार्यालय को अवगत कराया गया कि श्री जजपाल सिंह निवासी पंजाबी मोहल्ला अशोकनगर के सूचना पत्र दिनांक 12.08.2013 की तामिली हेतु अनुविभागीय अधिकारी, अशोकनगर को भेजा गया। अनावेदक के घर पर उपलब्ध न होने के कारण व्यक्तिशः तामिली नहीं हो सकी। इस पत्र के साथ अनुविभागीय अधिकारी अशोकनगर का पत्र संलग्न किया गया, इस पत्र में अनुविभागीय अधिकारी अशोकनगर द्वारा अनावेदक को सूचना पत्र की तामिली का कार्यवाही विवरण अंकित किया गया है।
10. कार्यालय अनुविभागीय अधिकारी अशोकनगर के पत्र दिनांक 11.08.2013 द्वारा इस कार्यालय को अवगत कराया गया कि "श्री जजपाल सिंह पुत्र श्री गुरुमेज

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सिंह पंजाबी मोहल्ला अशोकनगर के सूचना पत्र तामील कराने हेतु दिनांक 08.08.2013 को पत्र प्राप्त हुआ। मेरे तथा तहसीलदार अशोकनगर एवं कस्बा पटवारी के साथ नगर पालिका में सम्पर्क करने पर अनावेदक नहीं मिले। इनके घर पर पहुंच कर जानकारी प्राप्त करने पर बताया गया कि अनावेदक नहीं है। वह कल आपको ईद के मौके पर मिलेंगे। दिनांक 9.8.2013 को भी श्री जजपाल सिंह ईदगाह पर नहीं पहुंचे तथा घर पर भी नहीं मिले। पुनः दिनांक 10.08.2013 को अनावेदक के घर पंजाबी कालोनी अशोकनगर पर कोई भी नहीं मिला, ताला लगा था। इस कारण श्री जजपाल सिंह को व्यक्तिगत सूचना तामिल नहीं हो सकी।

उक्त परिस्थिति में सूचना पत्र अनावेदक के पड़ोसी तथा रिश्तेदारों के समक्ष पढ़कर सुनाया गया और अनुरोध किया कि अनावेदक को इस संबंध में अवगत करा दे। एक प्रति घर पर चस्पा कर तामील की गयी, तथा चस्पा किये जाने का पंचनामा तैयार कर उपस्थित मोहल्ले वासियों के हस्ताक्षर भी कराये गये। सम्पूर्ण कार्यवाही की विडियो रिकार्डिंग करायी गयी। अनावेदक के मोबाइल नम्बर पर एस.एस.एस. संदेश भेजकर छानबीन समिति के समक्ष उपस्थित होने हेतु अनावेदक को अवगत कराया गया एवं अनावेदक के फेसबुक पर भी समाचार डाला गया। स्थानिय समाचार पत्रों एवं इलेक्ट्रानिक मिडिया में भी उक्त सूचना प्रकाशित हुई।

11. छानबीन समिति की बैठक दिनांक 12 अगस्त 2013 की बैठक में अनावेदक उपस्थित नहीं हुये। शिकायतकर्ता पक्ष के सात व्यक्ति उपस्थित हुये इनके द्वारा लिखित आवेदन प्रस्तुत किये गये एवं एक अन्य शिकायतकर्ता श्री रमेश मालवीय के कथन लिपिबद्ध किये गये। समस्त शिकायतकर्ताओं द्वारा अनावेदक के द्वारा प्राप्त किये गये नट अनुसूचित जाति के प्रमाण पत्र को फर्जी बताया गया एवं अभिलेख प्रस्तुत करते हुए प्रमाण पत्र निरस्त करने की मांग की गयी। इन अभिलेखों का उल्लेख कलेक्टर एवं पुलिस अधीक्षक, अशोकनगर के प्रतिवेदन में किया जा चुका है।
12. छानबीन समिति द्वारा दिनांक 12.08.2013 की बैठक में निर्णय लिया गया कि "अनावेदक जानबूझकर समिति के समक्ष उपस्थित होने से बचना चाहते हैं। अनावेदक को पुनः न्यायहित में एक अवसर दिया जाय। इसके उपरान्त भी यदि वे समिति के समक्ष उपस्थित नहीं होते हैं तो प्रकरण में एक पक्षीय निर्णय लिया जायेगा।"
13. छानबीन समिति की बैठक दिनांक 16.09.2013 का सूचना पत्र कलेक्टर अशोकनगर के माध्यम से तामील करने हेतु कार्यालयीन पत्र दिनांक 07.09.2013 को प्रेषित किया गया। कलेक्टर अशोकनगर के पत्र दिनांक 13.09.2013 द्वारा अवगत कराया गया कि अनुविभागीय अधिकारी अशोकनगर के माध्यम से अनावेदक को सूचनापत्र तामिली की कार्यवाही की गई एवं अनुविभागीय अधिकारी अशोकनगर का आयुक्त अनुसूचित जाति विकास को सम्बोधित पत्र दिनांक 14.09.2013 भी संलग्न कर इस कार्यालय को प्रेषित किया गया।
14. अनुविभागीय अधिकारी अशोकनगर के पत्र दिनांक 14.09.2013 द्वारा यह अवगत कराया गया है कि "अनावेदक को तामील करने हेतु सूचनापत्र दिनांक 12.09.2013 को प्राप्त हुआ। मेरे तथा तहसीलदार अशोकनगर के साथ नगरपालिका में सम्पर्क करने पर अनावेदक नहीं मिले। उनके घर पर जाकर सूचनापत्र तामिल कराने के तीन बार प्रयास कराये गये किन्तु घर पर ताला बंद होने के कारण उनके पड़ोसी तथा रिश्तेदारों के समक्ष सूचनापत्र पढ़कर सुनाया गया और उनसे अनुरोध किया गया कि इस सम्बंध में उन्हें अवगत करा दें। सूचना पत्र की एक प्रति अनावेदक के घर पर चस्पा कर तामील की गई। चस्पा किये जाने का पंचनामा तैयार कर उपस्थित मोहल्ले वासियों के भी हस्ताक्षर करवाये गये। पूरी कार्यवाही की विडियो रिकार्डिंग करायी गई है। अनावेदक के मोबाइल नंबर एवं फेस बुक पर भी समिति के समक्ष उपस्थित होने हेतु अवगत कराया गया। सार्वजनिक उद्घोषणा डोन्डी पिटवाकर करवाई

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- गई एवं स्थानीय समाचार पत्रों में भी इस आशय की सूचना प्रकाशित हुई है।”
15. छानबीन समिति की बैठक दिनांक 16.09.2013 को अनावेदक समिति के समक्ष उपस्थित नहीं हुए ना ही उनके द्वारा समिति के समक्ष उपस्थित न हो पाने का कोई लिखित कारण प्रस्तुत किया गया। अनावेदक को दो बार छानबीन समिति की बैठकों की सूचना तामील करने का जिला प्रशासन द्वारा सम्पूर्ण प्रयास किया गया परन्तु अनावेदक जानबूझकर सूचना पत्र प्राप्त नहीं करना चाहते हैं। अतः जिला प्रशासन द्वारा अनावेदक तक सूचना पहुंचाने के परम्परागत उपाय जैसे घर पर नोटिस चस्पा करना, मोहल्ले वासियों के समक्ष सूचना पढकर सुनाना, एवं अनावेदक को अवगत कराने का अनुरोध करना, समाचार पत्रों में समाचार प्रकाशित करवाना, डोन्डी पिटवाने के अतिरिक्त अनावेदक तक सूचना पहुंचाने की आधुनिकतम तकनीक एस.एम.एस. एवं फेसबुक माध्यमों का भी प्रयोग किया गया। इन प्रयासों के बाद भी अनावेदक की ओर से छानबीन समिति को किसी भी प्रकार का प्रत्युत्तर प्राप्त नहीं हुआ है।
 16. अनावेदक श्री जजपाल सिंह जज्जी के उक्त रवैये से यह स्पष्ट है कि वे समिति के समक्ष उपस्थित होने से बचना चाहते हैं ताकि इस प्रकरण को अनावश्यक रूप से लम्बित रखा जा सके। समिति द्वारा उनकी लगातार अनुपस्थिति के कारण प्रकरण में एक पक्षीय रूप से विचार करने का निर्णय लिया गया।

निष्कर्ष

1. अनावेदक एवं उनकी सिजरा वंशावली में अंकित पिता, चाचा, दादा के भूमि सम्बंधी राजस्व अभिलेखों में सभी जगह जाति “सिख” अंकित है। कहीं पर भी ‘नट’ अनुसूचित जाति अंकित नहीं है।
2. अनावेदक के शैक्षणिक अभिलेखों में इनकी जाति सिख अंकित है, एवं कहीं पर भी ‘नट’ अनुसूचित जाति अंकित नहीं है।
3. अनावेदक द्वारा धारित N P बोर रायफल लायसेन्स नम्बर 53/2004 जो जिला दण्डाधिकारी अशोकनगर द्वारा जारी किया गया है में भी अनावेदक की जाति सिख (सामान्य) अंकित है।
4. राज्य स्तरीय पिछड़ा वर्ग छानबीन समिति का निर्णय दिनांक 11.11.2004 में अनावेदक की जाति के सम्बंध में निर्णय लिया गया था कि “श्री जजपाल सिंह संधू द्वारा ही पूर्व में स्वयं को नट (बाजीगर) बताकर अनुसूचित जाति का प्रमाण पत्र प्राप्त किया गया। बाद में राजनैतिक लाभ लेने के लिए स्वयं को “कीर” बताकर पिछड़ा वर्ग जाति का प्रमाण पत्र प्राप्त किया गया। अतः श्री जजपाल सिंह संधू को तहसीलदार अशोकनगर द्वारा प्रदत्त ‘कीर’ पिछड़ा वर्ग जाति का प्रमाण पत्र निरस्त किया जाता है।”
5. छानबीन समिति को कलेक्टर एवं पुलिस अधीक्षक अशोकनगर से प्राप्त जांच प्रतिवेदनों में एवं अन्य संलग्न अभिलेखों, में अनावेदक को “सिख”, ‘संधू’ सामान्य जाति का होना दर्शाया गया है। अनावेदक के पक्ष में ऐसा कोई भी अभिलेख प्रस्तुत नहीं हुआ है जो अनावेदक को ‘नट’ बाजीगर अनुसूचित जाति प्रमाणित करे। अनावेदक के विरुद्ध समिति के समक्ष उपस्थित व्यक्तियों द्वारा भी दस्तावेजी साक्ष्य प्रस्तुत करते हुए यह बताया गया है कि अनावेदक अनुसूचित जाति का न होकर ‘सिख’ सामान्य जाति का है।

निर्णय

उपरोक्त विवेचना के आधार पर समिति सर्व सम्मति से अनावेदक श्री जजपाल सिंह पिता श्री गुरमेज सिंह के ‘नट’ अनुसूचित जाति के प्रमाण पत्र जो दिनांक 06.11.2008 को अनुविभागीय अधिकारी अशोकनगर द्वारा जारी किया गया था के सम्बंध में निम्न निर्णय लेती है:-

1. अनुविभागीय अधिकारी अशोकनगर के प्रकरण क्रमांक 31-वी-121/8-9/दिनांक 06.11.2008 के द्वारा अनावेदक श्री जजपाल सिंह को ‘नट’ अनुसूचित जाति का प्रमाण पत्र कूटचित अवैधानिक एवं फर्जी दस्तावेजों के आधार पर जारी किया गया है। अतः यह प्रमाण पत्र निरस्त कर राजसात किया जाए।

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2. अनावेदक श्री जजपाल सिंह को अवैध तथा फर्जी रूप से आरक्षण का लाभ देने के लिए अनुसूचित जाति का प्रमाण पत्र जारी करने वाले सम्बंधित जिम्मेदार अधिकारियों के विरुद्ध आपराधिक प्रकरण एवं मध्यप्रदेश सिविल सेवा आचरण नियम 1965, म.प्र. सिविल सेवा (वर्गीकरण नियंत्रण तथा अपील) नियम 1966 के तहत अनुशासनात्मक कार्यवाही करने की अनुशंसा की जाती है।
3. अनावेदक श्री जजपाल सिंह के विरुद्ध फर्जी एवं कूट रचित आधारों पर अनुसूचित जाति का प्रमाण पत्र प्राप्त करने एवं इसके आधार पर नगरीय निकाय चुनाव में भाग लेने के कारण इनके विरुद्ध आपराधिक प्रकरण पंजीबद्ध करने की अनुशंसा की जाती है।

<p>(अशोक शाह) सचिव मध्यप्रदेश शासन अनुसूचित जाति कल्याण विभाग एवं अध्यक्ष राज्य स्तरीय संदेहास्पद अनुसूचित जाति प्रमाण पत्र छानबीन समिति, मध्यप्रदेश</p>	<p>(जे.एन. भालपानी) आयुक्त अनुसूचित जाति विकास एवं सदस्य सचिव राज्य स्तरीय संदेहास्पद अनुसूचित जाति प्रमाण पत्र छानबीन समिति मध्यप्रदेश</p>
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<p>(डॉ जी.पी. पटेल) संयुक्त संचालक (प्रतिनिधि) आदिम जाति अनुसंधान एवं विकास संस्थान भोपाल एवं सदस्य राज्य स्तरीय संदेहास्पद अनुसूचित जाति प्रमाण पत्र छानबीन समिति, मध्यप्रदेश</p>	<p>(अजय जासू) सचिव मध्य प्रदेश राज्य अनुसूचित जाति आयोग भोपाल एवं सदस्य राज्य स्तरीय संदेहास्पद अनुसूचित जाति प्रमाण पत्र छानबीन समिति मध्यप्रदेश</p>
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18. The order dated 16-9-2013, has been challenged by the petitioner in the present petition.

19. Challenging the order dated 16-9-2013 (Annexure P/8), it is submitted by the Counsel for the petitioner, that :

- i- That the complaint was politically motivated, and the findings given by the High Power Caste Scrutiny Committee are also politically motivated, as BJP was in power, whereas the petitioner belongs to Congress Party;
- ii- That in the year 2004, the High Power Caste Scrutiny Committee had considered the Caste Certificate of "OBC" and at that time, the Caste Certificate of Scheduled Caste

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was also before the High Power Caste Scrutiny Committee and since, no comments against the "SC" Certificate, were made by the High Power Caste Scrutiny Committee in its final order dated 11-11-2004, therefore, it has to be presumed that the Caste Certificate of Scheduled Caste, issued in favour of the petitioner, was upheld by the High Power Caste Scrutiny Committee, therefore, the Caste Certificate of the petitioner cannot be examined again and again;

- iii- There was lack of quorum as the final order has been signed by only three members out of four;
- iv- No notice was served upon the petitioner;
- v- Even otherwise, 15 days notice was not issued;
- vi- The provisions of Order 5 C.P.C. were not followed.

20. Refuting the submissions made by the Counsel for the Petitioner, it is submitted by the Counsel for the respondents, that the petitioner has not clarified, as to how he was prejudiced by non-service of 15 days notice. Further, in fact he was duly served by substituted service of publication and in spite of that, he did not appear before the High Power Caste Scrutiny Committee. It is further submitted that the attempts made by the authorities to serve the notice, clearly shows that the petitioner was desperately avoiding the service of notice. Further, merely because the final order was not signed by one of the member would not make the order vulnerable as the said order was signed by the fourth member on a

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later date. Furthermore, in the earlier proceedings before the High Power Caste Scrutiny Committee, the Caste Certificate of "OBC" was in question, therefore, it was not necessary for the High Power Caste Scrutiny Committee to make any comment on the Caste Certificate of Scheduled Caste.

21. Heard the learned Counsel for the Parties.

- i- **That the complaint was politically motivated, and the findings given by the High Power Caste Scrutiny Committee are also politically motivated, as BJP was in power, whereas the petitioner belongs to Congress Party.**

22. By referring to the complaint of Ramesh Kumar Itoria, which has been placed on record by the respondents at page 28 of the return, it is submitted by Shri Vinod Bhardwaj, Senior Advocate that it is clear that one Ramesh Kumar Itoria, who was the member of District Congress Committee and Representative of the Member of Parliament had made a written complaint to Shri Jyotiraditya M. Scindia, who was Minister of State for Commerce and Industry, Government of India, complaining that various persons, including the petitioner has obtained forged Caste Certificates, which are being misused by them, therefore, these unscrupulous persons may be punished. It appears that Shri Jyotiraditya M. Scindia, who was Minister of State for Commerce and Industry, Government of India, wrote D.O. No. 1532 MOS (C&I)MP/2010 dated 30-9-2010 and forwarded the complaint to the then Chief Minister of State of M.P. for necessary action. This letter of Shri Jotiraditya M.

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Scindia is filed at page No. 27 of the Return. In its turn, the office of the then Chief Minister, Shri Shivraj Singh Chouhan, forwarded the complaint to the Principal Secretary, Adim Jati Kalyan Vibhag by letter dated 19-10-2010 and accordingly, the matter reached the High Power Caste Scrutiny Committee for enquiry.

23. It is submitted by the Counsel for the petitioner, that since the BJP was the ruling party in the State of Madhya Pradesh, therefore, it got apprehensive, as the elections of State Legislative Assembly were due somewhere in Nov/Dec. 2013, therefore, in order to prevent the petitioner from contesting the election as "SC" candidate, the action was taken.

Para 5.5 of the writ petition reads as under :

"5.5 That, the Legislative Assembly seat Ashoknagar (MP) is reserved for "Scheduled Caste" candidates. The Legislative Assembly elections in MP are due somewhere in Nov/Dec 2013. To prevent petitioner from contesting the election as "SC" candidate, his political rivals in BJP have pressurized MP government to cancel Petitioner's "SC" certificate. The BJP fears that petitioner is a popular candidate and if gets ticket from Congress would win in election as "SC" candidate from Congress party at Ashoknagar seat of Legislative Assembly."

24. Considered the submissions made by the Counsel for the petitioner regarding political interference/vindictiveness.

25. From complaint dated 22-9-2010 made by Ramesh Kumar Itoria, it is clear that the complainant was Member District Congress Committee and the representative of Member of Parliament and the complaint was made on a letter head with election symbol of National Congress Party. Thus, it is clear that the complaint was made by a Member of the District

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Congress Party, and the petitioner has also claimed that he is likely to contest the election as "SC" candidate from Congress Party. Further, the complaint was made to Shri Jyotiraditya M. Scindia, who was Minister of State for Commerce & Industry, Government of India. This Court can take judicial notice of the fact that National Congress Party was in power in the Centre. Thus, it is clear that the complaint was made to the Minister belonging to the National Congress Party. Further, the complaint was forwarded by Shri Jyotiraditya M. Scindia, Minister of State for Commerce & Industry, Government of India to Shri Shivraj Singh Chouhan, the then Chief Minister, and according to the petitioner, BJP was in power in the State. Thus, it is clear that in the present case, the complaint was made by a member of National Congress Party to a Minister belonging to National Congress Party, and the concerned Minister, in his turn, forwarded the complaint to the then Chief Minister. Therefore, the submission made by the Counsel for the Petitioner, that the BJP had an apprehension that the petitioner would win the election as a "SC" candidate, from Congress Party, and therefore, false case has been created against him, cannot be accepted. Hence, the first submission made by the Counsel for the petitioner, that in fact he is the victim of political vendetta is hereby rejected.

- ii- That in the year 2004, the High Power Caste Scrutiny Committee had considered the Caste Certificate of "OBC" and at that time, the Caste Certificate of Scheduled Caste was also before the High Power Caste

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Scrutiny Committee and since, no comments were made by the High Power Caste Scrutiny Committee in its final order dated 11-11-2004, therefore, it has to be presumed that the Caste Certificate of Scheduled Caste, issued in favour of the petitioner, was upheld by the High Power Caste Scrutiny Committee, therefore, the Caste Certificate of the petitioner cannot be examined again and again.

26. Considered the submissions made by the Counsel for the Petitioner. To substantiate the above mentioned submissions, it is submitted by the Counsel for the Petitioner, that one Baijnath Sahu, had filed a Writ Petition before the High Court of M.P., Gwalior Bench, which was registered as W.P. No.1330 of 2002. The copy of the Writ Petition has been placed on record, which is at page 29 of the Writ Petition. The Counsel for the Petitioner has referred to Paras 6, 7 and 8 of the said Writ Petition, which reads as under :

6. That, thereafter elections of the Member Zila Panchayat Guna took place in the year 1999 where he submitted his nomination as Scheduled Caste candidate. Copy of the nomination form of respondent no. 4 is annexed herewith and marked as Annexure P/4.

7. That, now the respondent no. 4 has submitted a caste certificate of "OBC" category and on that basis he has been elected as President Municipal Council, Ashoknagar as "OBC" candidate. Copy of his caste certificate issued by Tehsildar is annexed herewith and marked as Annex. P/5.

8. That, from the above facts it is apparent that the respondent no. 4 has obtained forged certificates of "OBC" and SC Category. Copy of the certificate as SC candidate is annexed and marked as Annexure

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P/6.

27. It is submitted that, this writ petition was finally disposed of by this Court by order dated 12-8-2002, with a direction, if the petitioner, in case, if makes any complaint under the aforesaid circular of the Government, the competent Authority can take action in this regard and decide the same expeditiously. Thus, it is submitted that when High Power Caste Scrutiny Committee took up the matter in the year 2004, then the "OBC" certificate as well as the "SC" certificate of the petitioner were before the High Power Caste Scrutiny Committee but in spite of that the High Power Caste Scrutiny Committee did not touch the "SC" Certificate of the Petitioner and had merely cancelled the "OBC" certificate of the Petitioner, therefore, the subsequent enquiry by High Power Caste Scrutiny Committee was unwarranted and thus, it is politically motivated.

28. Considered the submissions. It is clear from the record, that initially, the High Power Caste Scrutiny Committee by order dated 25-2-2004 had cancelled the "OBC" certificate of the Petitioner, which was challenged by him by filing a Writ Petition No.520/2004 and the said writ petition was disposed of by order dated 3-9-2004, and the order dated 25-2-2004, passed by the High Power Caste Scrutiny Committee was set aside on the ground of lack of quorum and the matter was remanded back for consideration afresh. Thereafter, the High Power Caste Scrutiny Committee passed a fresh order on 11-11-2004 and cancelled the "OBC" certificate of the petitioner. The relevant portion of the order dated 11-

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11-2004 is reproduced as under :

“प्रकरण के तथ्य निम्नानुसार है :-

1. श्री बैजनाथ साहू, पूर्व पार्षद, नगर पालिका, अशोकनगर द्वारा श्री जजपाल सिंह संधु के बारे में मुख्य रूप से आरोप है कि इन्होंने मण्डी समिति में कृषक सदस्य के निर्वाचन हेतु अभ्यर्थी के रूप में जो नाम निर्देशन पत्र प्रस्तुत किया है वह सामान्य जाति के सदस्य के रूप में दिनांक 20.4.1999 को प्रस्तुत किया।
2. श्री जजपाल सिंह संधु ने जिला पंचायत के सदस्य के निर्वाचन हेतु दिनांक 13.5.1999 को नट (बाजीगर) अनुसूचित जाति के सदस्य के रूप में नाम निर्देशन पत्र प्रस्तुत किया।
3. तहसीलदार अशोकनगर ने दिनांक 2.12.1999 को श्री जजपाल सिंह संधु को “कीर” पिछड़ा वर्ग का प्रमाण पत्र जारी किया। इस प्रमाण पत्र के आधार पर श्री जजपाल सिंह संधु नगरपालिका अध्यक्ष के पिछड़ा वर्ग हेतु आरक्षित पद पर निर्वाचित हुए।
4. प्रतिवादी श्री जजपाल सिंह संधु द्वारा दिनांक 21.2.1999 को उच्च स्तरीय छानबीन समिति को प्रस्तुत आवेदन पत्र में लेख किया है कि शिकायतकर्ता ने उनके विरुद्ध मण्डी समिति व जिला जनपद पंचायत के निर्वाचन के आवेदन प्रस्तुत किये हैं, वे दोनों ही चुनाव उन्होंने नहीं लड़े हैं। परन्तु नाम निर्देशन पत्र में उल्लेखित जाति के गलत होने के बारे में श्री संधु ने प्रतिवाद नहीं किया है।
5. आरोपी ने प्रतिवादी द्वारा अभिकथित लेख के संबंध में कलेक्टर गुना के पत्र क्रमांक क्यू/स्था.निर्वा/शि./200/348 दिनांक 2.8.2002 अनुसार वर्ष 1994 से 1999 तक श्री जजपाल सिंह संधु सामान्य रूप से जनपद क्षेत्र 15 से जनपद सदस्य के रूप में निर्वाचित होकर पंचायत पदधारी रहे हैं। श्री संधु ने सामान्य वर्ग से प्रतिभूति रूपये 1000 जमा कर मंडी समिति के सदस्य वार्ड 120/9 के नाम निर्देशन पत्र दाखिल कर चुनाव लड़ा है। जिला पंचायत क्षेत्र क्रमांक 17 के सदस्य के रूप में श्री संधु ने अपना नाम निर्देशन पत्र स्वयं को नट (बाजीगर) अनुसूचित जाति का होना बताकर पेश किया था। उक्त नाम निर्देशन के आधार पर श्री संधु ने जिला पंचायत का चुनाव अभ्यर्थी के रूप में लड़ा है।
6. उपरोक्त नाम निर्देशन संबंधी प्रमाण/आरोप तथा प्रतिवादी द्वारा इनके विरोध किये जाने के बावजूद कलेक्टर गुना द्वारा प्रतिवादी के क्रमशः सामान्य / नट बाजीगर (अनुसूचित जाति) तथा पिछड़ा वर्ग के रूप में विभिन्न चुनावों में अभ्यर्थी होने की पुष्टि की गई है।
उपरोक्त तथ्यों के आधार पर उच्च स्तरीय छानबीन समिति द्वारा निर्णय लिया गया कि :-
श्री जजपाल सिंह संधु द्वारा ही पूर्व में स्वयं को नट बाजीगर बताकर अनुसूचित जाति के प्रमाण पत्र प्राप्त किया गया जो बाद में राजनैतिक लाभ के लिये स्वयं को कीर बताकर पिछड़ा वर्ग जाति का प्रमाण पत्र प्राप्त किया गया। अतः श्री जजपाल सिंह संधु को तहसीलदार अशोकनगर द्वारा प्रदत्त “कीर” पिछड़ा वर्ग जाति को प्रमाण पत्र निरस्त किया जाता है।”

29. It is pertinent to note here that the petitioner accepted the findings given by the High Power Caste Scrutiny Committee and did not challenge

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the findings given by the High Power Caste Scrutiny Committee and thus, the "OBC" certificate dated 2-12-1999 issued in favour of the petitioner stood cancelled. Therefore, it is clear that the findings of facts and certain observations regarding political advantage, made by the High Power Caste Scrutiny Committee in its order dated 11-11-2004 were never challenged by the petitioner and thus, today also they holds the field.

30. Thus, it is clear from order dated 11-11-2004, that earlier the petitioner had submitted his nomination form as a candidate of "General Category" for the post of Member Krishi Upaj Mandi, and thereafter, in year 1999, he submitted his nomination paper for the post of Member Zila Panchayat, Ashoknagar as a "SC" candidate. Thereafter, he contested the election for the post of President Municipal Council as a "OBC" candidate, and again on 6-11-2008, he obtained the caste certificate of "SC".

31. Thus, it appears that the petitioner has changed his Caste from time to time as per his convenience.

32. As per the order dated 11-11-2004, passed by the earlier High Power Caste Scrutiny Committee, the petitioner had obtained the Caste Certificate of "OBC" on 2-11-1999, whereas according to the contents of WP No.1330/2002, the election for the post of President, Municipal Council, Ashoknagar were held in the month of December 1999 (Kindly see para 5.2 of the Writ Petition No.1330/2002), and the petitioner had contested the said election as "OBC" candidate. Thus, it is clear that the

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petitioner had obtained the "OBC" certificate, just few days before election for the post of President, Municipal Council, Ashoknagar.

33. Now, the present certificate of "SC" was issued to the petitioner on 6-11-2008. This Court can take judicial notice of the fact, that the election for the State Legislative Assembly were held on 27th of Nov. 2008. However, it is not known that whether the petitioner had contested the said election or not, but one thing is clear, that again just few days prior to the election for State Legislative Assembly, the petitioner had obtained the present caste certificate of "SC".

34. As the "SC" certificate, in question in the present petition is dated 6-11-2008 and since, the meeting of the earlier High Power Caste Scrutiny Committee was held on 11-11-2004, and since, the present Caste Certificate of "SC" was not in existence, therefore, there was no occasion for the High Power Caste Scrutiny Committee to consider the "SC" certificate dated 6-11-2008, issued in favour of the petitioner. It is submitted by the Counsel for the Petitioner, that the earlier High Power Caste Scrutiny Committee was already aware of the fact, that earlier the petitioner had submitted his nomination papers as "SC" candidate, therefore, it should have commented on the "SC" certificate of the petitioner, therefore, in absence of such observations, the High Power Caste Scrutiny Committee cannot be permitted to reopen the same issue. Consider the submissions made by the Counsel for the Petitioner.

35. The Counsel for the Petitioner was asked as to whether the petitioner was holding any "SC" Certificate on 2-11-1999 when the

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"OBC" certificate was issued in his favour and if he was having such certificate, then what happened to the said "SC" certificate and if the petitioner was belonging to "SC" candidate, then why he changed his caste, and why he obtained the "OBC" certificate and whether he had withdrawn his earlier "SC" certificate or not? It is submitted by the Counsel for the Petitioner, that as the present petition has been filed against the order dated 16-9-2013 (Annexure P/8), therefore, there is no pleading to meet out the above mentioned questions. He further submitted that, if any opportunity is granted, then the petitioner would clarify the above mentioned facts before the High Power Caste Scrutiny Committee. However, this fact is admitted by the Counsel for the Petitioner, that the "SC" certificate in question was issued on 6-11-2008, therefore, there was no occasion for the earlier High Power Caste Scrutiny Committee, to consider that whether the "SC" certificate dated 6-11-2008 was properly issued or not?

36. Thus, the second contention raised by the Counsel for the petitioner is rejected.

iii- There was lack of quorum as the final order has been signed by only three members out of four.

37. By referring to circular dated 8-9-1997 (Annexure R/4), it is submitted by the Counsel for the Petitioner, that the State Govt. has constituted a High Power Caste Scrutiny Committee consisting of four members i.e.,

1. Principal Secretary/Secretary, Adim Jati aur Anusuchit Jati Kalyan Vibhag.

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2. Director, Anusuchit Jati Vikas
3. A Specialist, having knowledge about S.C., as nominated by the Chairman.
4. Secretary, Anusuchit Jati Aayog.

38. By referring to the Attendance Sheet (Annexure R/10), it is submitted by the Counsel for the Petitioner, that the High Power Caste Scrutiny Committee of 5 members i.e., 1. Secretary, Anusuchit Jati Kalyan Vighag, 2. Commissioner, Anusuchit Jati Vibhag, 3. Director, Adim Jati Anusandhan and Vikas Vibhag, 4. Secretary, Anusuchit Jati Aayog and an 5. Director, National Anusuchit Jati Aayog was constituted. From attendance Sheet (Annexure R/10), it is clear that 4 members out of 5 were present and Director, National Anusuchit Jati Aayog was absent. However, the final order was signed by three members and was not signed by Joint Director, Adim Jati Anusandhan and Vikas Sansthan Bhopal. By referring to the note sheet dated 25-9-2013 (Annexure R/11), it is submitted by the Counsel for the petitioner, that even if Shri G.P. Patel, had signed the order at a later stage, it would not cure the defect and thus, the order dated 16-9-2013 is bad in the eyes of law for the reason that the same was not signed by all the four members of the High Power Caste Scrutiny Committee.

39. Considered the submissions made by the Counsel for the Petitioner.
40. It is clear from the circular dated 8-9-1997, a Four Member Committee has to be constituted, whereas from the attendance sheet, it appears that the High Power Caste Scrutiny Committee of 5 members was constituted. On 16-9-2013, one member of the Committee was absent,

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and the attendance sheet was signed by remaining 4 members, however, the order dated 16-9-2013 was signed by only three members and from the note sheet dated 25-9-2013, it appears that the fourth member was on leave on 25-9-2013, therefore, his signatures could not be obtained.

41. Thus, the moot question for determination is that whether a majority decision taken by a Committee would stand vitiated only on the ground that either the remaining members had not attended the meeting or had not signed the decision of the Committee. It is submitted by the Counsel for the petitioner, that such a decision would be bad because of lack of quorum.

42. To consider the submissions made by the Counsel for the petitioner, it would be appropriate to consider the law governing the field.

43. The Supreme Court in the case of **People's Union for Civil Liberties Vs. Union of India** reported in **(2005) 5 SCC 363** has held as under :

"15. It is nextly argued by the learned counsel for the petitioner that there was no proper consultation amongst the members of the Selection Committee. This is based on the fact that one of the members who was then the Leader of Opposition in the Council of States did not respond to the intimation sent to him in regard to the selection of the members since he was in hospital at that point of time. A perusal of the Act does not show that there is any quorum fixed for the selection nor does it provide for any meeting nor has any particular procedure been provided for. Under the Act, consultation by circulation is not impermissible. In such a situation, if one out of six did not respond, it would not vitiate the opinion of the other five members. On the contrary sub-section (2) of Section 4 specifically says that no appointment of a Chairperson or a member shall be invalid merely by reason of any vacancy in the Committee. In the

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instant case the Prime Minister, the Speaker of the House of the People, Minister in charge of the Ministry of Home Affairs in the Government of India, Leader of Opposition in the House of the People and Deputy Chairman of the Council of States having agreed on the appointment of the second respondent, we find no statutory error in the appointment of the second respondent."

The Supreme Court in the case of **Iswharichand VS. Satyanarain**

Sinha and others reported in **AIR 1972 SC 1812** has held as under :

"5.....It is rather unfortunate that the appellant's Writ Petition was dismissed in limited and without a proper appreciation of all the relevant facts. There is little doubt that the impugned Order made by the Chancellor was based entirely on the legality of the meeting where only two out of three members were present when the name of the appellant was recommended. The High Court delivered into the correspondence to sustain the order of the Chancellor on grounds other than those relied upon by him in that order for dismissing the Writ Petition in limine, which in our view, was not justified. It is also not denied that the meeting held by two of the three members on the 4th April 1970 was legal because sufficient notice was given to all the three members. If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered there at cannot be held to be invalid.

6. This proposition is well recognised and is also so stated in Halsbury's Laws of England, Third Edition (Vol. IX, page 48, Para 95). It is, therefore, unnecessary to refer to any decisions on the subject. In the view we have taken, the appeal is allowed with costs against respondent 3, the order of the Chancellor revoking the appointment of the appellant is set aside and the appellant is declared to have been validly appointed as Vice-Chancellor Of the Saugar University as from the 22nd June 1970."

A Division Bench of Delhi High Court, by judgment dated **12-3-2018**

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passed in the case of **Talluri Srinivas Vs. Union of India** in **W.P. (C)**

8341/2017 has held as under :

"15. In W.P. (C) No. 2674/2012, Kavita Meena & Ors. Vs. Government of National Capital Territory of Delhi & Ors. and other connected matters decided on 22nd May, 2012, challenge was regarding composition of Selection Committee, which as per column 13 of the Recruitment Rules, was to consist of Chairman, SCERT, Director, SCERT, Director of Education and representative of SC/ST to be nominated by Chairman, SCERT. It had transpired that the Chairman, SCERT and Director Education, Department of Education had not participated in some of the meetings when interviews were held. Issue was whether the Selection Committee was duly constituted in view of the Rule position. It was held as under:-

"5. The learned counsel appearing on behalf of the petitioners contended that once the majority of the members of the Selection Committee were present in the interviews held for selecting candidates, the selection process cannot be said to have been vitiated. It was also contended that as no quorum has been prescribed under the Recruitment Rules, the only requirement was that the majority of the members of the Committee should be present. In the present case, there were actually 4 to 5 members present in each of the interviews held during the period from 08.07.2010 to 28.07.2010. Therefore, the majority of the members of the Selection Committee were present in each and every interview meeting which was held. It was also submitted on behalf of the petitioners that the absence of the Chairman of SCERT did not make any difference inasmuch as the members present could nominate one amongst them to chair the meetings. In the present case, all the meetings were chaired by the Director, SCERT. The learned counsel for the petitioners placed reliance on two decisions of the Supreme Court in the case of *Ishwar Chandra v. Satyanarain Sinha & Ors* (1972) 3 SSC 383 and *People's Union for Civil Liberties v. Union of India* and *Anr.* (2005) 5 SCC 363 in support of the

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aforesaid contention.

6. The learned counsel for the respondents, who were applicants before the Tribunal, reiterated their stand before the Tribunal and supported the decision of the Tribunal. In addition, they referred the decision in the case of State of Andhra Pradesh & Anr. v. Dr. Mohanjit Singh and Ors. 1988 (Supp) SCC 562. It was contended that because of the said decision, the absence of a person from the Selection Committee vitiated the selection process.

7. Having heard the learned counsel for the parties, we are of the view that the decision rendered by the Tribunal is not in accordance with law and has to be set aside. The reason is that the two Supreme Court's decisions cited by the learned counsel for the petitioners clearly hold the field and in so far as the decision cited by the learned counsel for the respondents is concerned, that is clearly distinguishable.

8. In *Ishwar Chandra (supra)*, the case before the Supreme Court was concerning the appointment of the Vice-Chancellor of Saugar University. For the purpose of the appointment of the Vice-Chancellor, a Selection Committee was to be constituted under Section 13(2) of the University of Saugar Act, 1946. The Committee to be constituted was to consist of three persons; two of whom were to be elected by the Executive Council by single transferable vote from amongst persons not connected with the University or a College and the third was to be nominated by the Chancellor who was also empowered to appoint one of them as Chairman of the Committee. The two persons elected by the Executive Council of the University were Mr G.K. Shinde, a former Chief Justice of a High Court and Justice T.P. Naik of the Madhya Pradesh High Court while the third member, Shri C.B. Agarwal, a former Judge of the Allahabad High Court, was nominated by the Chancellor. Justice Naik was, however, unable to attend the meeting which was slated to be held on 04.04.1970 and in his absence the other two persons, namely, Shri Shinde and Shri

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Agrawal met as a Committee and submitted a panel of names from which the Chancellor appointed the appellant before the Supreme Court as Vice-Chancellor. The question that arose was whether only two members of the Committee, who were present, could have validly selected the appellant as a Vice-Chancellor. The Supreme Court, after considering the various facts and circumstances of the case, came to the following conclusion:-

"If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered there at cannot be held to be invalid".

9. The Supreme Court in arriving at this conclusion has placed reliance on the said proposition as stated in Halsbury's Laws of England, Third Edition (Vol. IX, page 48, para 95), which reads as under:-

"95. Presence of quorum necessary. The acts of a corporation, other than a trading corporation, are those of the major part of the corporators, corporately assembled. In other words, in the absence of special custom or of special provision in the constitution, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution contemplated. Where, therefore, a corporation consists of thirteen members, there ought to be at least seven present to form a valid meeting, and the act of the majority of these seven or greater number will bind the corporation. In considering whether the requisite number is present, only those members must be included who are competent to take part in the particular business before the meeting. The power of doing a corporate act may, however, be specially delegated to a particular number of members, in which case, in the absence of any other provision, the method of procedure applicable to the body at large will be applied to

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the select body.

If a corporate act is to be done by a definite body along, or by a definite body coupled with an indefinite body, a majority of the definite body must be present.

Where a corporation is composed of several select bodies, the general rule is that a majority of each select body must be present at a corporate meeting; but this rule will not be applied in the absence of express direction in the constitution, if its application would lead to an absurdity or an impossibility. Thus, where such a select body is composed of four members and two of them happen to vacate their offices at the same time, an election will be valid although only the remaining two are present at it."

10. The second decision relied upon by the learned counsel for the petitioner was that of People's Union for Civil Liberties (supra). In that case, the appointment of a member of the National Human Rights Commission was in question. Section 4 of the Protection of Human Rights Act, 1993, stipulated that the appointment of Chairperson and other Members of the National Human Rights Commission has to be made, after obtaining recommendations of a Committee comprising:-

The Prime Minister • The Speaker of the House of People • The Minister Incharge of the Ministry of Home Affairs in the Government of India • Leader of Opposition in the House of People • Leader of Opposition in the Council of States • Deputy Chairman of the Council of States It so happened that the selection in the case before the Supreme Court took place by a Committee in which the Leader of Opposition in the House of People was absent. Therefore, the selection was under challenge. The Supreme Court held as under:-

"15. It is nextly argued by the learned counsel for the petitioner that there was no proper consultation amongst the members of the Selection Committee. This is based on the fact

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that one of the members who was then the leader of the Opposition in the Council of the States did not respond to the intimation sent to him in regard to the selection of the members since he was in the hospital at that point of time. A perusal of the Act does not show that there is any quorum fixed for the selection nor does it provide for any meeting nor any particular procedure has been provided. Under the Act consultation by circulation is not impermissible. In such a situation, if one out of six did not respond, it would not vitiate the opinion of the other five Members. On the contrary Subclause 2 of Section 4 specifically says that no appointment of a Chairperson or a member shall be invalid merely by reason of any vacancy in the Committee. In the instant case the Prime Minister, the Speaker of the House of the People, Minister Incharge of the Ministry of Home Affairs in the Government of India, Leader of Opposition in the House of People and Deputy Chairman of the Council of States having agreed on the appointment of the second respondent, we find no statutory error in the appointment of the second respondent."

* * * *

20. In *Ram Autar Santosh Kumar vs. State of Bihar & Ors.*, AIR 1987 Patna 13, a Full Bench of the Patna High Court had examined the question whether a rule prescribing quorum for Assessment Sub-Committee constituted under Section 27-A(1) of the Bihar Agricultural Produce Market Act, 1961 was ultra vires the main provision or the rule making power. Section 27A(1) had stipulated that an Assessment Sub-Committee shall consist of Chairman, Vice Chairman and Secretary of the Market Committee for the purpose of assessment of levy and fee. It did not prescribe any minimum quorum. Quorum for Assessment Sub-Committee prescribed by Rule 88 was two members who had the discretion to refer the case to a Bench of all members of the Sub-Committee. For several reasons, the challenge was rejected. What is of importance for the present decision are the observations in paragraph 20 of the said judgment which reads :

"20. In this context one may perhaps equally

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highlight the anomalous result which must flow herein from holding that each and every member of the Assessment Sub-Committee must always attend throughout each and every proceeding of an assessment. Would it be necessary that all the three members must sit together like a regular Full Bench of a Court of Law to hear and decide every case of the assessment of Market fee? Would it be even possible or practicable to do so? If one of the members of the Assessment Sub-Committee was taken ill or otherwise becomes unable to attend for some time the whole proceedings in all the existing cases be stalled and the other members of the Committee debarred from functioning or deciding the cases by themselves. If such were to be the situation, each member can stall the function of the Assessment Sub-Committee to the state of total paralysis. The Assessment Sub-Committee would be eventually rendered nugatory during the period of absence of any of its members. Identical situation would arise in the case of illness, or failure to attend even one of the many meetings for one or the other reasons for each one of its members. An interpretation which would lead to such anomalous, if not mischievous, results has, therefore, to be avoided even on the larger canons of construction."

Observations and reasoning above is cogent and we respectfully agree. In an earlier paragraph, the Full Bench had rejected the contention that the question of quorum of the Sub-Committee must be decided on the same parameters as quorum of a Court, i.e. the quorum of a Division Bench or quorum fixed for the Larger Bench. It was held that the said analogy should not and cannot be drawn for determining the question of quorum of statutory bodies performing quasi-judicial functions. The contention that in case the third member had participated, he may have taken a contrary view and may have converted the other two members to his view was rejected as an assumption based upon surmises and conjectures. This contingency, it was observed, was basic and inherent in every statutory body for which quorum has been lawfully prescribed. Indeed when minimum quorum of members is prescribed, in fact it becomes

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the committee/ authority, itself. For arriving at the said finding, the Full Bench referred to the decision in Ishwar Chandra (supra) and the ratio that when no quorum was prescribed and majority members were present, the meeting would be legal and valid. Reference was also made to the judgment in Punjab University, Chandigarh vs. Vijay Singh Lamba, AIR 1976 SC 1441 wherein the majority view taken by the Full Bench of the Punjab & Haryana High Court in judgment reported as Vijay Singh Lamba vs. Punjab University, AIR 1976 P&H 143 was reversed approving the minority opinion and holding that if the quorum consists of two members then any two out of three can perform functions of the Standing Committee. Referring to the requirement of unanimity in the Regulation, it was observed that it refers to unanimity of the members who for the time being were sitting in the Committee and were the quorum.

21. We would at this stage refer to the decision in Vijay Singh Lamba (supra) wherein the Supreme Court held that „quorum“ denotes minimum number of members of any body or persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may be lawful. Generally, it would be left to the Committees/Bodies themselves to fix the quorums for the meetings. However, in the said case, the syndicate which had appointed the Standing Committee had fixed the quorum, which it was held, was valid. Pertinently it was observed that it would be inappropriate to draw parallels between such cases and a court proceeding where a matter by law, the case was required to be heard by Benches of three Judges. Reliance placed by the petitioner on the said observations would be entirely fallacious and wrong, for the present case statutory provisions quoted above refer to constitution of the Appellate Authority consisting of five members, without the enactment specifically prescribing or fixing any quorum. The contention that by default or in the absence of any provision fixing statutory quorum, all five members of the Appellate Authority must sit to constitute a valid quorum, otherwise the proceedings before the Appellate Authority will be illegal and invalid, has to be rejected and refused as fallible and flawed. This contention has been repeatedly examined and

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answered in negative.

44. There is nothing in Circular dated 8-9-1997, to indicate, that in case all the members do not attend the meeting, then the proceedings of the Committee shall stand vitiated. Furthermore, there is nothing in the circular to indicate that approval by circulation is not permissible. Thus, if the signatures of Shri G.P. Patel were obtained on the impugned order subsequently, it would not vitiate the proceedings/order, because approval by circulation is not prohibited and secondly, the original order dated 16-9-2013 was already signed by majority of the members of the Committee, thus, it can be said that the decision dated 16-9-2013, was by a majority of Committee, therefore, it is not vitiated. Thus, the contention of the petitioner, that the order dated 16-9-2013 is vitiated on account of lack of quorum and non-signing of order by Shri G.P. Patel, is hereby rejected.

- iv- **No notice was served upon the petitioner;**
- v- **Even otherwise, 15 days notice was not issued;**
- vi- **The provisions of Order 5 C.P.C. were not followed.**

45. For the sake of convenience, all the three arguments advanced by the petitioner shall be considered conjointly.

46. The Supreme Court in the case of **Madhuri Patil Vs. Commr. Tribal Development** reported in **(1994) 6 SCC 241** has held as under :

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

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educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

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

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes

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such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

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

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

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

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

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

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

13. The High Court would dispose of these cases as expeditiously as possible within a period of three

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months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

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

47. Accordingly, a High Power Caste Scrutiny Committee has been constituted and by circular dated 8-9-1997, procedure, to be adopted by the Committee, has also been provided which reads as under :

“छानबीन समिति द्वारा अपनाई जाने वाली जांच प्रक्रिया

छानबीन समिति, जांच का कार्य पुलिस अधिकारी के माध्यम से करावेगी। जांच अधिकारी मौके पर जाकर विस्तृत जांच प्रतिवेदन छानबीन समिति को निर्धारित अवधि के अंदर प्रस्तुत करेगा।

2. छानबीन समिति, यदि सतर्कता अधिकारी की रिपोर्ट के आधार पर यह पाती है कि आवेदक का सामाजिक स्तर का क्लेम सही नहीं है या संदेहास्पद है या गलत रूप से क्लेम प्रस्तुत कर रहा है तब समिति ऐसे आवेदक को सतर्कता अधिकारी की रिपोर्ट की प्रति के साथ पंजीकृत डाक से रसीद सहित, कारण बताओ नोटिस सूचना पत्र शैक्षणिक संस्था या कार्यालय प्रमुख के माध्यम से भेजेंगे। कारण बताओ सूचना पत्र में इस बात का उल्लेख होगा कि आवेदक अपना अभ्यावेदन या उत्तर कारण बताओ सूचना पत्र प्राप्ति के 15 दिवस के भीतर संचालक को प्रस्तुत करें और किसी भी परिस्थिति में अभ्यावेदन अथवा उत्तर प्रस्तुत करने के लिए 30 दिन से अधिक का

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समय नहीं दिया जायेगा। यदि आवेदक उसे सुनने का और वाद प्रस्तुत करने का अवसर चाहता है तो ऐसा आवेदन या उत्तर प्राप्त होने के पश्चात् समिति की बैठक संचालक बुलायेगे और संयुक्त/अतिरिक्त सचिव, ऐसी समिति के अध्यक्ष के रूप में आवेदक को सुनवाई एवं साक्ष्य प्रस्तुत करने का पूर्ण अवसर देंगे। समिति प्रकरण में निर्णय के लिये आम सूचना जारी करेगी, जिसका प्रचार प्रसार गांव में या मोहल्ले में डौंडी या अन्य सुविधाजनक साधनों से किया जायेगा। ताकि यदि कोई व्यक्ति या संघ आवेदक के क्लेम का विरोध करना चाहे तो वे कर सकें। आवेदक को ऐसा अवसर देने के बाद भी आवेदक को उसके अभिभावक के माध्यम से या अन्य अवसर देने के बाद समिति ऐसी जांच कर सकेगी जिससे आवेदक के क्लेम और अन्य आपत्तियों पर विचार करने पर शीघ्र निर्णय लेने के लिए आवश्यक हो। उभय पक्षों को सुनकर समिति एक उचित आदेश पारित करेगी जिसमें निष्कर्ष पर पहुंचने के लिए संक्षिप्त तर्कों अथवा तथ्यों का विवरण दिया जायेगा।

3. ऐसे प्रकरणों जहां सतर्कता अधिकारी की रिपोर्ट आवेदक के पक्ष में हो, समिति को किसी कार्यवाही की आवश्यकता नहीं होगी।

4. यदि उम्मीदवार अव्यवस्क हो तो उसके माता पिता अभिभावकों को भी सूचना पत्र जारी किया जायेगा ताकि उसके माता पिता/अभिभावक अपने क्लेम के पक्ष में साक्ष्य प्रस्तुत कर सकें।

5. समिति द्वारा जांच प्रतिदिन के आधार पर की जायेगी और किसी भी स्थिति में इसे पूर्ण करने के लिये 2 माह से ज्यादा समय नहीं लेगी। यदि जांच समिति यह पाती है कि आवेदक का क्लेम झूठा या असत्य है तो समिति ऐसी जाति प्रमाण पत्र की निरस्त करने या राजसात करने के लिये आदेश पारित करेगी। इस जांच के निष्कर्षों में से उम्मीदवार या उसके माता पिता/ अभिभावकों को एक माह के भीतर अवगत कराया जायेगा।

6. छानबीन समिति द्वारा पारित आदेश अंतिम होगा।”

48. It is submitted that the Committee was required to issue notice by registered post and at least 15 days time should be given to file reply. It is further submitted that the Committee is under obligation to follow the procedure for service of notice, as provided under Order 5 of C.P.C. Further, there is nothing on record to suggest that the notice were served upon the petitioner. On the contrary, there is a specific report by the Collector, that on both the occasions, the petitioner was not available therefore, the notice could not be personally served upon him. Further, it is submitted that neither any SMS was sent to the petitioner, nor any notice was uploaded on his Facebook account. It is further submitted that

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the newspaper cuttings as relied upon by the respondent cannot be considered, as no notice was published in the newspaper, but merely a news was published with regard to the attempts made by the authorities to serve the petitioner.

49. Heard the learned Counsel for the petitioner.

50. Section 141 of C.P.C. reads as under :

"141. Miscellaneous proceedings.— The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

Explanation.— In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

51. The High Power Caste Scrutiny Committee has been constituted in pursuance to the order passed by the Supreme Court in the case of **Madhuri Patil (supra)**. By circular dated 8-9-1997, a detailed procedure, to be followed by the High Power Caste Scrutiny Committee, has also been laid down. Thus, in the considered opinion of this Court, under these circumstances, the High Power Caste Scrutiny Committee is not required to follow the provisions of Order 5 of CPC.

52. It is next contended by the Counsel for the Petitioner, that as per the circular dated 8-9-1997, the Committee was required to send the notice by registered post, however, in the present case, they were sent for service by *humdust*, and thus, the procedure adopted by the Committee was not in accordance with the procedure laid down in the circular dated 8-9-1997.

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53. The submission made by the Counsel for the Petitioner, cannot be accepted. It is clear from circular dated 8-9-1997, that the notice by registered post has to be sent through head of the institution, whereas it is not the case of the Petitioner, that at the relevant time, he was holding any post. Further, in the circular dated 8-9-1997 itself, it is mentioned that where the candidate is a minor, then the notice shall be issued to his parents/guardian, however, no mode of service of notice has been provided in clause 4 of the procedure laid down in the circular dated 8-9-1997. Thus, this Court is of the considered opinion, that if the Committee had sent the notice, to be served *humdast* on the petitioner, then the said procedure cannot be said to be defective or bad in law.

54. The next question for determination is that whether the petitioner was avoiding the service of notice or not?

55. According to the impugned order dated 16-9-2013, it appears that by order dated 6-8-2013, the High Power Caste Scrutiny Committee issued notices to the petitioner, for his appearance on 12-8-2013. It was reported by the Collector Guna, that the Sub Divisional Officer was sent to the house of the petitioner, for service of notice, however, he was not in the house. The copy of the report given by the S.D.O. was also annexed with the report of the Collector, from which it appears that the Sub-Divisional Officer, Guna received the copy of the notices on 8-8-2013 and accordingly, he went to the house of the petitioner, but he was not found in the house, and the family members informed the S.D.O., that the petitioner would be available on the next day. On 9-8-2013, when the

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SDO again went to the house of the petitioner, then again he was not available in the house. Again on 10-8-2013, no one was found in the house, accordingly, the notice could not be served personally on the petitioner. Thereafter, the notice was read over to the relatives and neighbours and they were requested to inform the petitioner. One copy of the notice was affixed on the house and the signatures of the neighbourers were obtained. The entire proceedings were got videographed. SMS was sent on the mobile of the petitioner and news was also uploaded on the Facebook account of the petitioner. News was also published in the local print and electronic media. However, on 12-8-2013, the petitioner did not appear before the High Power Caste Scrutiny Committee. Seven complainants appeared against the petitioner, and therefore, their statements were recorded.

56. However, in order to give another opportunity of hearing, the High Power Caste Scrutiny Committee, decided to issue fresh notice to the petitioner and accordingly, fresh notice was issued on 7-9-2013 for service of the same through Collector, Guna, for his appearance on 16-9-2013. Again the Collector, Guna by his report dated 13-9-2013 informed that the notice was received by him on 12-9-2013. He and Tahsildar, Ashoknagar tried to contact the petitioner, but he was not available. Three attempts were made to serve the notice but every time, they could not be served as the house was locked. Accordingly, the notice was read over to his relatives and neighbourers, and request was made to inform the petitioner. A copy of the notice was affixed on the house of the

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petitioner and Panchnama was prepared. The entire efforts were videographed. SMS was also sent on the mobile phone of the petitioner and news was also uploaded on the Facebook account of the petitioner. Public notice was also given by beat of drums and news was also published in the newspaper. On 16-9-2013 also, the Petitioner did not appear before the High Power Caste Scrutiny Committee. Thus, it is clear that all efforts were made by the authorities to serve the petitioner, however, he managed to avoid the service of notice. A news was also published in the news papers, thus, it is clear that the petitioner had deliberately avoided the service of notice in spite of all the efforts made by the authorities, and thus, the news published in the newspaper can be said to be service by substituted service by publication.

57. However, another important question which requires consideration is that even when this Court has come to a conclusion that the petitioner had avoided the service of notice and the news published in the newspaper can be said to be a service by substituted service of publication, then whether the Committee could have proceeded *ex parte* against the petitioner?

58. From the impugned order dated 16-9-2013, it is clear that on two occasions, notices were issued to the petitioner i.e., firstly on 6-8-2013 and secondly on 7-9-2013. While issuing notice on 6-8-2013, the Committee had fixed the date of appearance as 12-8-2013 and while issuing notice on 7-9-2013, the date of appearance of the petitioner was fixed as 16-9-2013. Circular dated 8-9-1997 provides that by issuing

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notice to the candidate, 15 days time should be given from the date of receipt of notice. In the present case, on both the occasions, the date of appearance was fixed prior to expiry of 15 days time. Thus, this Court is of the considered opinion, that although the notices are treated to be served on the petitioner, but still they were bad in law, as the minimum stipulated time was not given to the petitioner, and thus the right of the petitioner to respond to the notices was violated.

59. Now the next question for determination is that when sufficient time was not granted to the petitioner, and the petitioner also did not appear before the Committee and did not pray for time to file reply, then whether the proceedings of the Committee can be said to be vitiated or not?

60. It is submitted by the Counsel for the respondents, that when the petitioner was served with the notice, even then he did not appear before the Committee and did not pray for time, therefore, the proceedings before the Committee would not stand vitiated.

61. *Per contra*, it is submitted by the Counsel for the petitioner, that when the notice itself was *per se* illegal, then non-appearance of the petitioner would not validate the proceedings of the Committee.

62. Considered the submissions made by the Counsel for the parties.

63. Order 9 Rule 13 C.P.C reads as under :

"13. Setting aside decree ex parte against defendant.— In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was

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prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation.— Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree."

Thus, it is clear that mere irregularity in the service of notice/summons shall not be a ground to set aside an *ex parte* decree.

However, the knowledge of pendency of the suit is not sufficient to attract 2nd proviso to Order 9 Rule 13 C.P.C., but the knowledge of the date of hearing is important. The Supreme Court in the case of **Sushil**

Kumar Sabharwal Vs. Gurpreet Singh reported in (2002)5 SCC 377

has held as under :

"11. The High Court has overlooked the second proviso to Rule 13 of Order 9 CPC, added by the 1976 Amendment which provides that no court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. It is the knowledge of the "date of hearing" and not the knowledge of "pendency of suit" which is relevant

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for the purpose of the proviso abovesaid. Then the present one is not a case of mere irregularity in service of summons; on the facts it is a case of non-service of summons. The appellant has appeared in the witness box and we have carefully perused his statement. There is no cross-examination directed towards discrediting the testimony on oath of the appellant, that is, to draw an inference that the appellant had in any manner a notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim which he did not avail and utilise."

64. In the impugned order dated 16-9-2013, it has not been held that the petitioner had any knowledge of date of hearing and in spite of that he has not appeared. It is submitted that the respondents have filed the copy of the newspapers as Annexure R/8 to show that it was mentioned in the news that the next date of hearing was 12-8-2013, but thereafter, the Committee itself had decided to give one more opportunity to the petitioner and accordingly, fresh notice was issued. According to the impugned order dated 16-9-2013, news was once again published in the newspaper, but the respondents have not placed the said newspapers on record. It is further submitted that in spite of the repeated opportunities, the respondents have not produced the original record of the proceedings of the High Power Caste Scrutiny Committee, therefore, an adverse inference has to be drawn, and it has to be held that no date of hearing was mentioned in the newspaper. Considered the submissions made by the Counsel for the petitioner and perused the record. The record of the High Power Caste Scrutiny Committee was made available before this Court on 6-12-2018, but since, the same was not complete, therefore, the case was adjourned. On 12-3-2019, the entire record of the High Power

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Caste Scrutiny Committee was available (as is evident from the order dated 12-3-2019), but when the case was fixed for hearing, then on 22-4-2019, the record of the High Power Caste Scrutiny Committee was not produced, and a specific direction was also given to the respondents to keep the original record available on 25-4-2019, however, again on 25-4-2019, the respondents did not produce the record. Why the record was sent back specifically when it was available on 12-3-2019 has also not been explained by the Counsel for the respondents. Why the record has not been called in spite of the specific order by this Court on 22-4-2019 has also not been clarified by the State Counsel. It appears that for any reason best known to the respondents, they are now deliberately avoiding to produce the record.

65. Be that whatever it may.

66. The crux of the matter is that the record of the Committee is not before the Court, and under these circumstances, this Court has no option but to hold that the petitioner was not aware that 16-9-2013 is the date of hearing before the High Power Caste Scrutiny Committee.

67. Now, the question for determination is that whether any prejudice has been caused to the Petitioner because of *ex parte* order or not?

68. It is well established principle of law that violation of Natural Justice, by itself would not be sufficient to quash an order, unless and until, the person is prejudiced by denial of opportunity.

69. The Supreme Court in the case of **Dharampal Satyapal Ltd. Vs. CCE** reported in **(2015)8 SCC 519** has held as under :

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"40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

* * * *

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in *R.C. Tobacco*."

The Supreme Court in the case of **Ashok Kumar Sonkar v. Union of India** reported in (2007) 4 SCC 54 has held as under :

"26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well settled that it cannot put

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any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

29. In *Aligarh Muslim University v. Mansoor Ali Khan* the law is stated in the following terms: (SCC p. 540, para 25)

“25. The ‘useless formality’ theory, it must be noted, is an exception. Apart from the class of cases of ‘admitted or indisputable facts leading only to one conclusion’ referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta* referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.”

30. In *Karnataka SRTC v. S.G. Kotturappa* this Court held: (SCC p. 420, para 24)

“The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be

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put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given.”

31. In *Punjab National Bank v. Manjeet Singh* this Court opined: (SCC pp. 653-54, para 17)

“The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.”

32. In *P.D. Agrawal v. State Bank of India* this Court observed: (SCC p. 791, para 30)

“30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change.”

It was further observed: (SCC pp. 793-94, para 39)

“39. Decision of this Court in *S.L. Kapoor v. Jagmohan* whereupon Mr Rao placed strong reliance to contend that non-observance of the principles of natural justice itself causes prejudice or the same should not be read ‘as it causes difficulty of prejudice’, cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in *State Bank of Patiala*

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v. *S.K. Sharma and Rajendra Singh v. State of M.P.* the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula. (See *Viveka Nand Sethi v. Chairman, J&K Bank Ltd.* and *State of U.P. v. Neeraj Awasthi*. See also *Mohd. Sartaj v. State of U.P.*)”

The principles of equity in a case of this nature, in our opinion, will have no role to play. Sympathy, as is well known, should not be misplaced.

33. In *Maruti Udyog Ltd. v. Ram Lal* a Division Bench of this Court, wherein one of us was a member, noticing some decisions, observed: (SCC pp. 654-55, paras 44-45)

“44. While construing a statute, ‘sympathy’ has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.

45. In *A. Umarani v. Registrar, Coop. Societies* this Court rejected a similar contention upon noticing the following judgments: (SCC pp. 131-32, paras 68-70)

‘68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh* it is stated: (SCC p. 144, paras 36-37)

“36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court

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ordinarily would not pass an order which would be in contravention of a statutory provision.

37. As early as in 1911, Farewell, L.J. in *Latham v. Richard Johnson & Nephew Ltd.* observed: (All ER p. 123 E)

‘We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o’ the wisp to take as a guide in the search for legal principles.’ ”

70. Yet again, recently in *Ramakrishna Kamat v. State of Karnataka* this Court rejected a similar plea for regularisation of services stating: (SCC pp. 377-78, para 7)

“We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zila Parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned Single Judge and looking to the very directions given, a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment.” ’ ”

34. It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularised. The court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of the law, which renders the appointment to be a nullity.

35. We have noticed hereinbefore that in making appointment of the appellant, the provisions of Articles 14 and 16 of the Constitution and statutory rules were not complied with. The appointment,

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therefore, was illegal and in that view of the matter, it would be wholly improper for us to invoke our equity jurisdiction."

70. Thus, in order to find out that whether any prejudice has been caused to the petitioner or not, few questions were put by the Court, to the Counsel for the Petitioner, out of which some of them are as under :

1. Whether the petitioner ever contested any election for the post of Member Janpad Panchayat in the year 1994, as a "General Category Candidate" or not and whether he was elected or not?
2. Whether in the year 1999, the petitioner had contested the election for the post of Member Zila Panchayat as a candidate of "Scheduled Caste" or not and when the certificate of "Scheduled Caste" was obtained by him?
3. Whether the petitioner had contested the election for the post of President, Municipal Council Ashoknagar as a candidate of "OBC" and under what circumstances, the "OBC" certificate dated 2-12-1999 was issued to him and what happened to his earlier certificate of "SC"?
4. Why the certificate of "OBC" was obtained by the petitioner, just few days prior to the elections for the post of President, Municipal Council, Ashoknagar?
5. Whether any certificate of "SC" was ever issued in favour of the petitioner prior to 6-11-2008 and if so, then on what date, and when the said certificate was surrendered by him and why?
6. Why the petitioner did not obtain the "SC" certificate from 11-11-2004 ("OBC" certificate was cancelled by order dated 11-11-2004 by the High Power Caste Scrutiny Committee) till 6-11-2008?
7. The election for M.P. State Legislative Assembly were held

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on 27-11-2008, then why the petitioner had obtained his "SC" certificate just prior to holding of election ?

8. Why the petitioner was obtaining different caste certificates, just few days prior to the elections?
9. Whether the surname of the petitioner has been recorded in some of the documents as "Sandhu" or not?
10. If the earlier "SC" certificate was still in force, then why the petitioner obtained a fresh "SC" certificate on 6-11-2008?

71. The questions pertaining to obtaining Caste Certificates just prior to the elections are necessary in the light of the findings given by the Previous High Power Caste Scrutiny Committee, and the Collector, Guna that the petitioner is in habit of obtaining Caste Certificate for his political advantages.

72. In reply, it is submitted by the Counsel for the petitioner, that this petition has been filed by the petitioner challenging the order dated 16-9-2013 and to the above mentioned questions put by the Court, there is no reply in the writ petition. However, it is submitted that in case the petitioner is granted an opportunity before the High Power Caste Scrutiny Committee, then he shall give answer to all the above mentioned questions. Thus, it is clear that serious questions which have arisen against the petitioner, have remained unanswered. This Court feels that in view of Direction 13.14 given by the Supreme Court in the case of **Madhuri Patil (Supra)**, the petitioner may face penal consequences, therefore, it would be appropriate not to deny an opportunity to the petitioner to answer all the serious questions, including the above mentioned.

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73. Thus, even by holding that the petitioner had avoided the service of notices issued by the High Power Caste Scrutiny Committee and the paper publication was sufficient to hold that the petitioner was served by substituted service by publication, but as the petitioner was not aware of the date of hearing, and considering the fact, that the petitioner may suffer penal consequences, the matter is remanded back to the High Power Caste Scrutiny Committee for adjudication of the Caste Certificate of "SC" dated 6-11-2008, afresh. The High Power Caste Scrutiny Committee is directed to decide the matter afresh after issuing notice to the petitioner as prescribed under the guidelines.

74. By way of abundant caution, the High Power Caste Scrutiny Committee is directed not to get prejudiced by any of the observations made by this Court, in this order, and the matter should be decided strictly in accordance with the evidence which would come on record.

75. Now the next question for determination is that while remanding the matter back to the High Power Caste Scrutiny Committee, whether this Court should quash the order dated 16-9-2013, resulting in automatic revival of "SC" Certificate or not?

76. Once, this Court has come to a conclusion that the matter deserves to be remanded back to the High Power Caste Scrutiny Committee, then it has no option but to quash the order dated 16-9-2013.

77. However, as the petitioner has failed to answer the questions put by this Court so as to find out that whether any prejudice was caused to the petitioner or not, therefore, while remanding the matter back to the

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High Power Caste Scrutiny Committee, this Court does not find it appropriate to restore back the "SC" Certificate dated 6-11-2008.

78. Accordingly, it is directed that till the decision is taken by the High Power Caste Scrutiny Committee, the "SC" certificate dated 6-11-2008 (Annexure P/7) issued in favour of the petitioner, shall remain in abeyance and the petitioner shall not be entitled to take advantage of the same.

79. The High Power Caste Scrutiny Committee is directed, that in case, it comes to a conclusion that the petitioner has wrongly obtained the "SC" certificate dated 6-11-2008, then it shall take further action as per the directions, including direction No.13.14, given by the Supreme Court in the case of **Madhuri Patil (Supra)**.

80. With aforesaid observations, the petition is finally **disposed of**.

(G.S. AHLUWALIA)
Judge
01/05/2019

Arun*