

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 4th OF SEPTEMBER, 2023

WRIT PETITION No. 13273 of 2023

BETWEEN:-

MANGLA W/O SHANTILAL, AGED ABOUT 31 YEARS, OCCUPATION: SARPANCH GRAM IDARATPUR TEHSIL AND DIST. KHARGONE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI AJAY JAIN, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY DEPARTMENT OF REVENUE VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. SUB DIVISIONAL OFFICER (REVENUE) KHARGONE (MADHYA PRADESH)**
- 3. POOJA PALE W/O SHYAMLAL PALE GRAM IDARATPURA, TEHSIL AND DISTRICT KHARGONE (MADHYA PRADESH)**
- 4. GAYATRI S/O JITENDRA PATIDAR, AGED ABOUT 24 YEARS, GRAM IDARATPUR, TEHSIL AND DISTRICT KHARGONE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VAIBHAV BHAGWAT, GOVT. ADVOCATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

This petition has been filed under Article 226 of the Constitution of India by the petitioner, a returned candidate, who was elected as Sarpanch of Idaratpura, Tehsildar and District Khargone against the order dated 16.12.2022, passed by the respondent No.3/Sub Divisional Officer (Revenue), Khargone in Revision No.45/2022-202,3 wherein, in an Election Petition filed by the respondent No.3 challenging the election of the petitioner, the application filed by the petitioner under Order 7 Rule 11 of the CPC has been rejected.

2] In brief, the facts of the case are that the petitioner was elected as Sarpanch of Gram Panchayat Idaratpura, Tehsildar and District Khargone on 14.7.2022, which was challenged by the respondent No. 3 in an Election Petition preferred under Section 122 of the Panchayat Raj Adhiniyam 1993. In the aforesaid proceedings, an application under Order 7 Rule 11 of the CPC was filed by the petitioner on various grounds, *inter alia* that the caste certificate of the petitioner, who belongs to a Scheduled Caste cannot be challenged in the election petition.

3] Counsel for the petitioner has submitted that as per the decision rendered by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil vs. Addl. Commr., Tribal Development*** reported as (1994) 6 SCC 241, the aforesaid application was filed by the petitioner but it has been rejected by the respondent No.2 vide impugned order dated 16.12.2022. Counsel has further submitted that the learned Member of the Election Tribunal had erred in rejecting the application, as it is a settled law that the veracity of the caste certificate can only be decided by a high level committee as has been held by the Supreme Court in the case of ***Kumari Madhuri Patil (supra)***. No other ground has been raised before this court

by the learned counsel for the petitioner.

4] Shri Vaibhav Bhagwat, learned Counsel for the respondent/State, on the other hand, has opposed the prayer, and it is submitted that no case for interference is made out, as the co-ordinate Bench of this Court in ***Election Petition No.20 /2009 { Ramlal Kol vs. Moti Sashyap @ Motilal}*** vide its order dated 10.4.2013 has already held that a caste certificate can be challenged in an Election Petition.

Counsel for the respondent has also relied upon the decision rendered by the Chhattisgarh, Bilaspur passed in ***Civil Revision No.62/2016 {Smt.Babita Balmiki vs. Amrika Bai and others}*** dated 5.12.2016 wherein also, the same issue was involved and referred to the Division Bench

5] Heard the learned council for the parties, and perused of the documents filed on record as also the decision by the co-ordinate Bench of this Court in Election Petition No.20/2009 in the case of ***Ramlal Kol*** (supra), the relevant paras 12 and 39 of which read as under :-

“12. In this view of the matter, scrutiny as to authenticity of the caste certificate furnished by the returned candidate before the Returning Officer is not beyond scope of an election dispute. The issue No. 4 is, accordingly, answered in the negative.

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39. As the genuineness of the caste certificate filed by the respondent along with the nomination paper was questioned, the returning officer ought to have verified as to whether such a certificate was at all issued. Needless to say that the burden of proving that the improper acceptance of a nomination has materially

affected the result of the election lies upon the petitioner but where the person whose nomination has been improperly accepted in the returned candidate himself, such would be the obvious conclusion. This issue is, therefore, also answered in the affirmative.”

6] So far as the order passed by the Chhattisgrah High Court in ***Civil Revision No.62/2016*** in the case of ***Smt.Babita Balmiki*** (supra), is concerned, the relevant paras 14 & 15 of the same read as under:-

“14. Even assuming that Section 16 of the Certification Act is attracted because the Election Tribunal is a civil court in terms of Section 441 of the Act, 1956,, what is prohibited under Section 441 is that a civil court would not do anything which is contrary to the provisions of the Act. The jurisdiction of the civil court to decide the issue whether a person belongs to a particular caste or not is not barred. What is barred is that it cannot take any action which is contrary to the provisions of the Certification Act. We can from a reading of Section 16 of the Certification Act assume that is the Committee passes some order upholding or rejecting the validity of the social status, then the civil court may be bound by that order because that authority has been constituted under the provisions of the Act to decide these issues. However, if the High Power Committee has never dealt with that issue in respect of an individual, then the jurisdiction of the Court to decide whether that individual belongs to a Scheduled Caste or Scheduled Tribe not is not barred under the provisions of the Act.

15. Another reason why we are inclined to hold that Section 16 of the Certification Act does not oust the jurisdiction of the Election Tribunal is that the Election Tribunal alone can set aside an election. If we accept the argument of learned

counsel for the petitioner then one issue would be referred to the High Power Committee for decision. The Election Tribunal shall then wait for the decision of the Committee and decide the matter as per the decision of the Committee. This is not the intention of the legislature and is also against the Constitutional scheme. Once an election Tribunal is constituted and empowered to decide whether a person has been validly elected or not, then all the disputes which relate to that election must be and should be decided only by the duly constituted Election Tribunal. If we permit bifurcation of the case then it will lead to a result where no election petition should ever be decided within a reasonable period.”

7] Thus, this Court is of the considered opinion that no case for interference is made out, as the caste certificate of the petitioner can certainly be challenged and decided in the election petition. Accordingly, the present petition being devoid of merits, is hereby *dismissed*.

(SUBHODH ABHYANKAR)
JUDGE