

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 9<sup>th</sup> OF MAY, 2024**

**WRIT PETITION No. 17520 of 2022**

**BETWEEN:-**

**RAKESH CHOUKSEY S/O SHRI SHYAM LAL  
CHOUKSEY, AGED ABOUT 40 YEARS, OCCUPATION:  
BUSINESS R/O ROYAL CITY, IN FRONT OF BHAGWATI  
GARDEN, SAGAR ROAD, RAISEN, DISTRICT RAISEN  
(MADHYA PRADESH)**

**.....PETITIONER**

**(NONE)**

**AND**

- 1. STATE OF MADHYA PRADESH, THROUGH ITS  
PRINCIPAL SECRETARY, PANCHAYAT AND  
RURAL DEVELOPMENT DEPARTMENT,  
VALLABH BHAWAN, BHOPAL (MADHYA  
PRADESH)**
- 2. STATE ELECTION COMMISSION, THROUGH ITS  
SECRETARY, NIRVACHAN BHAWAN, ARERA  
HILLS, BHOPAL, DISTRICT BHOPAL (MADHYA  
PRADESH)**
- 3. COLLECTOR/DISTRICT ELECTION OFFICER,  
DISTRICT RAISEN M.P. (MADHYA PRADESH)**
- 4. RETURNING OFFICER (PANCHAYAT)-CUM-SUB  
DIVISIONAL MAGISTRATE, RAISEN, DISTRICT  
RAISEN (MADHYA PRADESH)**
- 5. TEHSILDAR, RAISEN, DISTRICT RAISEN  
(MADHYA PRADESH)**
- 6. SHRI RAJENDRA SINGH S/O SHRI SANMAN  
SINGH R/O VILLAGE AND POST MEHGAON,  
TEHSIL RAISEN, DISTRICT RAISEN (MADHYA  
PRADESH)**

**.....RESPONDENTS**

**(SHRI ROHIT JAIN – GOVERNMENT ADVOCATE FOR STATE, MS. NIKITA  
KAURAV – ADVOCATE FOR RESPONDENTS NOS.2, 3 & 4, SHRI MOHAN LAL**

***SHARMA – ADVOCATE FOR RESPONDENT NO.6)***

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

**ORDER**

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:

- “(i) This Hon'ble Court may kindly be pleased to issue the Writ of Quo Warranto against the private respondent and further be pleased to restrain him from working as Member, Jila Panchayat Raisen for Ward No.3.
- (ii) This Hon'ble Court may kindly be pleased to hold that, the private respondent does not belong to Other Backward Classes (OBC) category.
- (iii) This Hon'ble Court may kindly be pleased to call for the records of election of Member, Jila Panchayat Raisen for Ward No.3, for kind perusal of this Hon'ble Court.
- (iv) Any other relief/reliefs, order/orders, direction/directions which this Hon'ble Court may deem fit and proper may kindly be granted to the petitioner including the cost of petition.”

2. Since none appears for petitioner, therefore, this petition would be decided after going through the pleadings and documents filed alongwith the writ petition as well as submissions made by counsel for respondents.

3. According to the petition, post of Member, Jila Panchayat Raisen Ward No.3 was reserved for the member of Other Backward Classes. Respondent No.6 submitted his nomination form by submitting his affidavit that he belongs to O.B.C. category whereas according to petitioner, respondent No.6 belongs to Unreserved Category. It was also

mentioned in the nomination form that since he is not in possession of caste certificate, therefore, on the basis of affidavit, his nomination paper was accepted and accordingly, he was declared elected.

4. It is the case of petitioner that caste of respondent No.6 is “Baghel” and not “Pal Baghele” and thus, this petition in the nature of *quo warranto* has been filed, pleading that respondent No.6 is not eligible to hold the post of Member Jila Panchayat Ward No.3, Raisen.

5. Respondent No.6 has filed his return and submitted that in view of specific bar under Article 243 ZG (B) of Constitution of India, the election to any municipality cannot be called in question by filing a writ petition under Article 226 of Constitution of India but it should have been questioned by filing an election petition. It is further submitted that whether respondent No.6 belongs to Baghel caste or Pal Baghele caste cannot be adjudicated by this Court because in the light of judgment passed by Supreme Court in the case of **Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development and others** reported in (1994) 6 SCC 241 the jurisdiction lies with High Level Caste Scrutiny Committee.

6. Similarly respondents Nos.2 to 4 have also filed their return and taken a similar defence. It is further submitted that wife of petitioner has also filed an election petition against the election of respondent No.6. The entire election was conducted strictly in accordance with law.

7. During the course of arguments, respondent No.6 has also provided a copy of order dated 19.12.2023 passed by Commissioner, Bhopal Division, Bhopal in Election Petition No.2/A-89/2022-23 by which election petition filed by Smt. Pooja Chouksey wife of petitioner was rejected on the ground that as per Circular dated 05.12.2014 issued by Madhya Pradesh State Election Commission, if a candidate submits

his affidavit with regard to caste, then Returning Officer shall not investigate the matter any further and nomination form shall be treated as valid. By referring to the same circular, it was also held that if the candidate is not in possession of caste certificate at the time of submission of nomination form, then he can submit his affidavit in that regard. Therefore, it was held that nomination paper of respondent No.6 was rightly accepted because he had submitted an affidavit that he belongs to Pal Baghele caste and at that time he was not in possession of caste certificate.

8. Heard learned counsels for respondents as well as also considered the grounds raised in the writ petition.

**Whether writ of *quo warranto* thereby challenging the election of a candidate is maintainable or only the election petition should have been filed?**

9. The Supreme Court in the case of **Bharati Reddy v. State of Karnataka and others**, reported in **(2018) 6 SCC 162** has held as under:

“18. It is indisputable that the post of Adhyaksha of Zila Panchayat is a public office in relation to which a writ of *quo warranto* can be issued, if the post is occupied by a person who is not eligible to be so appointed or incurs disqualification to continue to occupy the post.....

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35. In *B.R. Kapur v. State of T.N.* [*B.R. Kapur v. State of T.N.*, (2001) 7 SCC 231] the Constitution Bench was called upon to consider the situation where a person convicted for a criminal offence and whose conviction has not been suspended pending appeal, could be sworn in as the Chief Minister of a State and continue to function as such. The Court was called upon to answer the controversy on the basis

of indisputable fact that the incumbent Chief Minister had already been convicted of a criminal offence and such conviction had not been suspended in the pending criminal appeal. After considering the purport of Article 164 and Article 173 of the Constitution, the Court concluded that the appointment of the second respondent in the appeal as the Chief Minister was in clear violation of the constitutional provisions and thus a writ of quo warranto was inevitable. The substratum of the exposition was the factum of basic ineligibility of the person to be appointed or continue as Chief Minister. In a concurring judgment by Brijesh Kumar, J. (as his Lordship then was) the nature of writ of quo warranto has been explicated in the following words : (SCC pp. 315-17, paras 79-81)

“79. ... A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in the proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from *Words and Phrases*, Permanent Edn., Vol. 35-A, p. 648. It reads as follows:

‘The original common law writ of quo warranto was a civil writ at the suit of the Crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was

supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well as to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the Crown. Long before our revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only; and such, without any special legislation to that effect, has always been its character in many of the States of the Union, and it is therefore a civil remedy only. ...'

80. In the same volume of *Words and Phrases*, Permanent Edn., at p. 647 we find as follows:

'The writ of "quo warranto" is not a substitute for mandamus or injunction *nor for an appeal or writ of error*, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. *McKittrick v. Murphy* [*McKittrick v. Murphy*, 148 SW 2d 527, 529, 530 : 347 Mo 484 (1941)] .

Information in the nature of "quo warranto" does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, *but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed.* *Walsh v. Thatcher* [*Walsh v. Thatcher*, 102 SW 2d 937, 938 : 340 Mo 865 (1937)] .'

81. In *Halsbury's Laws of England*, 4th Edn., Reissue Vol. I, p. 368, para 265 it is found as follows:

‘265. *In general*.—An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which *lay against a person who claimed or usurped an office, franchise, or liberty*, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.’”

(emphasis in original)

36. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* [*High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*, (2003) 4 SCC 712 : 2003 SCC (L&S) 565] in a concurring judgment S.B. Sinha, J. (as his Lordship then was) noted that the High Court [*Gujarat Mazdoor Panchayat v. State of Gujarat*, 2001 SCC OnLine Guj 76 : (2001) 4 LLN 319] in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. However, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. The Court went on to observe that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules as held in *Mor Modern Coop. Transport Society Ltd. v. State of Haryana* [*Mor Modern Coop. Transport Society Ltd. v. State of Haryana*, (2002) 6 SCC 269] . The Court also took notice of the exposition in *R.K. Jain v. Union of India* [*R.K. Jain v. Union of India*, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128] . The Court noted that with a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which was required to be considered was as to whether the incumbent fulfilled the qualifications laid down under the statutory

provisions or not. This is the limited scope of inquiry. Applying the underlying principle, the Court ought not to enquire into the merits of the claim or the defence or explanation offered by the appellant regarding the manner of issuance of income and caste certificate by the jurisdictional authority or any matter related thereto which may be matter in issue for scrutiny concerning the validity of the caste certificate issued by the jurisdictional statutory authority constituted under the State Act of 1990 and the Rules framed thereunder. That inquiry may require examination of all factual aspects threadbare including the legality of the stand taken by the appellant herein.

**37.** In *Food Corporation of India v. Jagdish Balaram Bahira* [*Food Corporation of India v. Jagdish Balaram Bahira*, (2017) 8 SCC 670 : (2017) 2 SCC (L&S) 708] , the question was in reference to the caste certificate which was invalidated after the verification done by the jurisdictional Scrutiny Committee. The observations in the said decision may be of some import, if the Caste Verification Committee was to invalidate the caste certificate issued to the appellant after due verification. As a matter of fact, the enquiry before the Caste Verification Committee ought to proceed in terms of the procedure prescribed by the 1990 Act and Rules framed thereunder and including the dictum of this Court in, amongst others *Madhuri Patil v. Commr., Tribal Development* [*Madhuri Patil v. Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] .

**38.** In *Rajesh Awasthi v. Nand Lal Jaiswal* [*Rajesh Awasthi v. Nand Lal Jaiswal*, (2013) 1 SCC 501 : (2013) 1 SCC (Cri) 521 : (2013) 1 SCC (L&S) 192] , the Court noted that a writ of quo warranto will lie when the appointment is made contrary to the statutory provisions as held in *Mor Modern Coop. Transport Society Ltd.* [*Mor Modern Coop. Transport Society Ltd. v. State of Haryana*, (2002) 6 SCC 269] Further, relying on the decisions in *B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage*



*Board Employees' Assn. [B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Assn., (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] and Hari Bansh Lal v. Sahodar Prasad Mahto [Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771]* , wherein the legal position has been restated that the jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued if the appointment is contrary to the statutory rules and the Court has to satisfy itself that the appointment is contrary to the statutory rules. In that case, the Court after analysing the factual matrix found, as of fact, that there was non-compliance with sub-section (5) of Section 85 of the Electricity Act, 2003, in the matter of appointment of the incumbent to the post of Chairperson of the Commission for which it became necessary to issue a writ of quo warranto. In the supplementing judgment by one of us Dipak Misra, J. (as his Lordship then was), the settled legal position expounded in *B.R. Kapur [B.R. Kapur v. State of T.N., (2001) 7 SCC 231]* , *University of Mysore [University of Mysore v. C.D. Govinda Rao, AIR 1965 SC 491 : (1964) 4 SCR 575]* , *High Court of Gujarat [High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712 : 2003 SCC (L&S) 565]* , *Centre for PIL v. Union of India [Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609]* has been recapitulated in paras 29 to 33 of the reported decision.

**39.** We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto.”

10. A coordinate Bench of this Court by order dated **04.01.2024** passed in the case of **Rajalbai vs. Panchayat & Rural Development Department and others** in **W.P. No.17844/2022 (Indore Bench)** has held as under:

“11. So far as the maintainability of this petition is concerned, in view of the law laid down in the case of **Suresh Choudhary V/s. Atarlal Verma : 2006 (3) MPLJ 506**, the Writ Petition in the nature of *quo warranto* would have been maintainable if facts were not disputed by the respondents. Therefore the Election Petition was the appropriate remedy available to the petitioner to challenge the election of Sarpanch of Gram Panchayat.”

11. Thus, it is clear that if disqualification has been acquired by a candidate after his election or the facts are undisputed, then the competence of the elected candidate to hold a public office can also be challenged by filing a petition in the nature of *quo warranto*. Therefore, this Court would consider the facts of the present case in the light of limited scope of interference as hold by Supreme Court in the case of **Bharati Reddy (supra)**.

**Whether respondent No.6 belongs to Pal Baghele caste which is an OBC caste or not?**

12. Respondent No.6 has filed his return and in paragraph No.13 he has specifically stated as under:

“13. That, in reply to Para 5.3 of instant petition it is respectfully submitted by the answering respondent that he belongs to "Pal Baghele" caste as such he has categorically mentioned the same fact in his affidavit and since the caste certificate was not available with the answering respondent therefore, he submitted said affidavit before the competent authority. There is no misrepresentation or fraud on the part of answering respondents.”

13. Accordingly, respondent No.6 was directed to point out his caste certificate. It was fairly conceded by counsel for respondent No.6 that neither on the date of submission of nomination form, respondent No.6 was in possession of any caste certificate and even as on today he is not having any caste certificate in his favour.

14. The abovementioned statement made by counsel for respondent No.6 was got reverified by this Court by asking the same question twice and every time a specific statement was made by counsel for respondent No.6 that even today respondent No.6 is not in possession of any caste certificate. Therefore, it is clear that respondent No.6 does not belong to Pal Baghele caste and thus, he was not competent to contest the election for the post of Member, Jila Panchayat Raisen from Ward No.3.

**Whether the question of caste certificate can be decided by this Court or it has to be referred to High Level Caste Scrutiny Committee in the light of judgment passed by Supreme Court in the case of Bharati Reddy (supra)?**

15. In the present case there is no caste certificate in favour of respondent No.6. Only when some dispute is raised with regard to authenticity of caste certificate issued in favour of a person, then the matter can be referred to High Level Caste Scrutiny Committee but where respondent No.6 does not have any caste certificate in his favour then the matter cannot be referred to High Level Caste Scrutiny Committee to verify whether respondent No.6 belongs to O.B.C. caste or not? It is the genuineness of the caste certificate which is to be judged by High Level Caste Scrutiny Committee but High Level Caste Scrutiny Committee has no jurisdiction to issue a caste certificate in favour of any person.

16. Under these circumstances, when respondent No.6 is not in possession of caste certificate to show that he belongs to Pal Baghele caste, this Court is of considered opinion that the matter is not required to be referred to High Level Caste Scrutiny Committee.

**Whether dismissal of election petition filed by Smt. Pooja Chouksey wife of petitioner will have any adverse effect on the present petition or not?**

17. Undisputedly the wife of petitioner had filed an election petition which was ultimately dismissed by order dated 19.12.2023 passed by Commissioner, Bhopal Division, Bhopal in Election Petition No.2/A-89/2022-23.

18. The pivotal question for consideration before the Election Tribunal was as to whether Returning Officer committed any illegality by accepting the nomination paper of respondent No.6 merely on the basis of an affidavit or not?

19. Accordingly, Commissioner, Bhopal Division, Bhopal by referring to circular issued by State Election Commission dated 05.12.2014 has held that even if a candidate is not in possession of caste certificate on the date of submission of nomination paper, still the nomination paper can be accepted on the basis of an affidavit submitted by the said candidate. Therefore, it was held that nomination paper of respondent No.6 was rightly accepted.

20. However, in the present case the question is as to whether respondent No.6 belongs to O.B.C. caste or not and in view of specific statement made by counsel for respondent No.6 that even today respondent No.6 is not in possession of caste certificate, it is clear that respondent No.6 has no authority to hold the office of Member, Jila Panchayat, Ward No.3, Raisen. Therefore, it is held that dismissal of

election petition filed by wife of petitioner will not have any adverse effect on the outcome of this petition.

21. No other defence has been taken by respondents.

22. Considering the totality of facts and circumstances of the case, it is held that since respondent No.6 has failed to prove that he belongs to O.B.C. caste, therefore, he is not entitled to hold the post of Member, Jila Panchayat from Ward No.3 Raisen because it was reserved for O.B.C. candidate only.

23. Accordingly, the petition which has been filed in the nature of *quo warranto* is **allowed**.

24. It is held that respondent No.6 is not eligible to hold the post of Member, Jila Panchayat, Ward No.3, Raisen. Henceforth, respondent No.6 shall cease to be the Member of Jila Panchayat from Ward No.3 Raisen and the said seat is declared vacant.

25. The petition succeeds and is **allowed**.

(G.S. AHLUWALIA)  
JUDGE