

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

W.P. NO. 29557 OF 2023

BETWEEN :-

**BRAJESH SINGH S/O SHRI RAJENDRA
SINGH, AGED ABOUT 53 YEARS,
OCCUPATION: MEMBER, ZILA
PANCHAYAT SEONI R/O VILLAGE
SANGAI, POST KAARIRAAAT, POLICE
STATION LAKHANWADA, DISTRICT
SEONI (MADHYA PRADESH)**

.... PETITIONER

***(BY SHRI SHASHANK SHEKHAR – SENIOR ADVOCATE WITH SHRI
ROHIT SOHGAURA - ADVOCATE)***

AND

**1. RAM PRASAD DEHARIA S/O SHRI
SWARUPCHANDRA DEHARIA, AGED
ABOUT 63 YEARS, R/O VILLAGE
SIMARIYA, POST BEEJHAWADA, TEHSIL
AND DISTRICT SEONI (MADHYA
PRADESH)**

**2. BASANT BAGHEL S/O SHRI
JAGESHWAR PRASAD BAGHEL, AGED
ABOUT 34 YEARS, VILLAGE JAIPUR
KALAN POST JAIPUR KALAN TEHSIL
AND DISTRICT SEONI (MADHYA
PRADESH).**

3. GYANCHANDRA CHOUDHARY (GYANI) S/O SHRI SEKAM CHOUDHARY, AGED ABOUT 45 YEARS, R/O VILLAGE AND POST BANKI P.S. BANDOL TEHSIL AND DISTRICT SEONI (MADHYA PRADESH)

4. MANISHA BAGHEL W/O SHRI MANISH BAGHEL, AGED ABOUT 35 YEARS, R/O VILLAGE SANGAI POST KAARIRAT P.S. LAKHANWADA DISTRICT SEONI (MADHYA PRADESH)

5. RAMCHARAN S/O SHRI PATIRAM, AGED ABOUT 56 YEARS, R/O VILLAGE AND POST SAADAK SEONI TEHSIL CHAPARA DISTRICT SEONI (MADHYA PRADESH)

6. RAMRAJ GUJAR @ SANTOSH DEHARIA S/O SHRI SONELAL, AGED ABOUT 38 YEARS, R/O VILLAGE CHEETAPAR POST BHOMA P.S. KANHIWADA TEHSIL AND DISTRICT SEONI (MADHYA PRADESH).

7. SUNIL BAGHEL S/O SHRI JAGDISH BAGHEL, AGED ABOUT 46 YEARS, R/O NAVNEET COLONY BEEJHAWADA TEHSIL AND DISTRICT SEONI (MADHYA PRADESH)

8. UTTAM SINGH KURWE S/O SHRI JEEWANLAL KURWE, AGED ABOUT 50 YEARS, R/O VILLAGE NAKTIA POST CHANDORI KHURD P.S. BANDOL TEHSIL AND DISTRICT SEONI (MADHYA PRADESH).

9. COLLECTOR/ RETURNING OFFICER ZILA PANCHAYAT ELECTION SEONI DISTRICT SEONI (MADHYA PRADESH)

....RESPONDENTS

(BY SHRI K.C. GHILDIYAL SENIOR ADVOCATE WITH SHRI SANJAY SARWATE – ADVOCATE)

(RESPONDENT NO. 9 BY SHRI MANOJ KUMAR JHA- ADVOCATE)

Reserved on	:	06/12/2023
Pronounced on	:	28/12/2023

This petition having been heard and reserved for judgment/order, coming on for pronouncement this day, this Court passed the following:

ORDER

The present petition under Article 226 of the Constitution of India has been filed challenging the order dated 16.11.2023 (Annexure P-16) passed by the Commissioner, Jabalpur Division, Jabalpur (MP), whereby the election of the petitioner to the post of Member, Zila Panchayat, has been set aside by allowing the election petition filed by the present respondent No.1.

2. The said election has been set aside on the ground that the seat in question was reserved for Scheduled Caste (SC) and the petitioner is not a member of SC community, hence, is disqualified to be elected from a reserved seat for that category. Further, fresh election has been ordered in the constituency.

3. The learned senior counsel appearing for the petitioner, while assailing the order of the Election Tribunal of the Commissioner, states that the petitioner is a member of Bagdi Caste, which is duly notified Scheduled Caste for the State of Madhya Pradesh, and is entered at Sr. No. 2 for the list of SCs for the State of Madhya Pradesh.

4. The learned counsel submits that though the petitioner had not submitted a copy of the caste certificate, but that was for the reason that the caste certificates of Bagdi caste members are not being issued by the authorities in Seoni and the petitioner cannot be put to a fault for this. It is also submitted that his cousin brothers namely Pramod Singh Baghel and Satyendra Singh Baghel have duly been issued the caste certificate of Bagdi caste, annexed at page 49 and 50 of the petition. It is also submitted that earlier the petitioner was issued the temporary caste certificate by the Naib Tehsildar, however, no permanent certificate could be issued due to the stubborn attitude of the authorities in not issuing fresh certificates of Bagdi Caste in Seoni District.

5. The learned counsel for the petitioner further submits that there is no statutory requirement that a member of reserved community should file copy of his caste certificate in Panchayat election in State of Madhya Pradesh. The learned counsel refers to Rule 40-A of M.P. Panchayat Nirvachan Niyam 1995, to state that if it comes to notice of the Returning Officer that the nomination paper of any candidate has been accepted for a seat reserved for SC, ST or OBC, though the said person *prima-facie* does not appear to be a member of such community, then the Returning Officer shall ask the candidate to file an affidavit to that effect that he is member of such category, and then no further enquiry will be held. The learned counsel further submits that there is no

provision of any enquiry at any later stage during the election process to that effect. Thus, it is the contention of the learned counsel for the petitioner, that the question gets buried for the purpose of election and a person, merely by submitting affidavit of being member of a reserved community, can very well contest the election, though he may not be having caste certificate of that reserved category. The learned senior counsel submits that the proposition may seem outrageous, but that is what the rule provides.

6. It is the further case of petitioner that merely submitting a certificate of being a member of reserved category is sufficient, and that the election tribunal also cannot conduct an enquiry to the aspect of caste status, as that jurisdiction is vested only in the Higher Level Committee as per the judgement in case of **Kumari Madhuri Patil Vs. Addl. Commissioner Tribal Development & Ors; 1994 (6) SCC 241**. It is the case of the petitioner that the Election Tribunal, while carrying out enquiry into the caste status of the petitioner, has acted contrary to the aforesaid judgement of the Supreme Court, and has assumed the jurisdiction of the Higher Level Committee, and decided a question, for which it was not having the technical expertise.

7. The learned counsel for the petitioner further submits that the earlier instructions issued by the State Election Commission on 05.12.2014 (page 73 of the petition) were directed to be followed for the Panchayat election being conducted in 2022 also,

and vide letter annexed at page No.71 dated 13.12.2021, the State Election Commission has duly circulated the earlier circular dated 05.12.2014 for application to Panchayat Elections being held in 2021-22.

8. It is the further case of the petitioner that the said circular dated 05.12.2014 clearly postulates that in terms of Rule 40-A of the Panchayat Nirvachan Niyam 1995, the State Election Commission has decided that it is desired from the candidate filing nomination against reserved seat, that he will file a copy of his caste certificate. However, in case of non-availability of caste certificate, the candidate shall be given an opportunity to submit an affidavit to the effect that he is member of a particular reserved category. Once such affidavit is submitted, then his nomination shall not be cancelled.

9. The learned senior counsel thus, submits that the said circular relaxes the requirement even going further to Rule 40-A. As per Rule 40-A, the requirement of the candidate not being prima facie member of reserved category, has been diluted and specific case of non-production of caste status certificate has been provided by the State Election Commission. It is his case that now no person claiming to be member of reserved community, is required to submit caste status certificate and the affidavit of the person concerned is conclusive proof of his caste status. This is the final conclusion and it cannot be questioned even in election petition, as argued on behalf of the petitioner.

10. The learned senior counsel for the petitioner also argued that the Election Tribunal ought not to have given the finding that the persons claiming themselves to be Bagdi in Seoni District are actually not Bagdis. It is submitted that once the Presidential order applies SC status to Bagdi Caste throughout the State, no different interpretation could be made by the Election Tribunal.

11. Per contra, the learned senior counsel for the respondent No.1 has stated that the petitioner was not in possession of his caste status certificate, and the person contesting election from a reserved seat claiming to be member of a reserved category, must produce his caste certificate.

12. It is stated by the learned counsel that the provisions of Rule 40-A are only temporary provisions applicable at the time of scrutiny of nomination papers and do not travel beyond that. It does not denude of the jurisdiction of the Election Tribunal. It is also stated that the Election Tribunal would not be helpless in such cases where the elected representative not even having caste certificate, wins from a reserved seat.

13. The learned senior counsel for respondent No.1 also states that the State Election Commission had issued instructions to the Returning Officers in the July 2020, which is available at page 140 of the paper book of the writ petition. It is argued that as per clause 10.14 and 10.25 of the said instructions, it is provided that filing caste certificate is mandatory alongwith the nomination

papers. Thus, it is argued that the petitioner was bound to file a copy of caste certificate.

14. It is also argued by the respondent No.1 that the Returning Officer would be required to get an affidavit filed only if the person prima facie does not seem to be member of reserved category, despite producing a caste certificate. The provision of Rule 40-A cannot be construed in the manner that even in absence of caste certificate, the person would be allowed to contest the elections merely on basis of his affidavit.

15. The learned counsel for the respondent No.1 has cited the following judgements in support of his contentions -

- a. **Vineshkumar Mavjibhai Parmar Vs. Dethali Gopalak Vividh**, reported in **2017 (1) SCC 273**, to argue that any interpretation of law should be avoided that leads to absurdity.
- b. **Sushila Aggarwal Vs. State**, reported in **2020 (5) SCC 1**, to argue that the Court should follow plain and literal interpretation of statute.
- c. **Gurudevudutta VKSSS Vs. State of Maharashtra**, reported in **2001 (4) SCC 534**, to argue that law cannot be allowed to result in absurdity.
- d. **Standard Chartered Bank Vs. Directorate of enforcement**, reported in **2005 (4) SCC 530**, to argue that law cannot be allowed to result in absurdity.
- e. **State of Jharkhand Vs. Jitendra Kumar Shrivastava**, reported in **2013 (12) SCC 210**, to argue

that administrative instructions can supplement the statutory rules by taking care of these situations where the rules are silent.

16. The learned counsel for the petitioner, in his rejoinder submissions, submitted that the executive instructions of July 2020 would not prevail over the force of Rules of 1995. It is argued that the executive instructions will not over-ride statutory rule 40-A. In support of his contentions, the leaned counsel for the petitioner relied on the following judgments -

- a. **Punjab Water Supply and Sewage Board Vs. Ranjodh Singh, reported in 2007 (2) SCC 491**, to state that any executive instructions cannot prevail over statutory rules.
- b. **C.L. Verma Vs. State of Madhya Pradesh, reported in 1989 Supp. SCC 473**, to state that any executive instructions cannot prevail over statutory rules.
- c. **Kalka Prasad Vs. Ramji Lal & Ors., reported in 2002 (3) MPLJ 121**, to state that the Election Tribunal ought to have allowed parties to adduce evidence and proper procedure has not been followed.
- d. **Lalamdas Vs. Vidyawatim, reproted in 2007 (1) MPLJ 410**, to say that the Election Tribunal ought to have allowed parties to adduce evidence and proper procedure has not been followed.
- e. **Omkar Mahle Vs. State of M.P. & Ors., reported in 2017 (2) MPLJ 715**, to state that to say that the Election

Tribunal ought to have allowed parties to adduce evidence and proper procedure has not been followed.

f. **Kailash Kumar Parmanand Vs. State of M.P. & Ors. Reported in 1999 (2) MPLJ 722**, on the question of opportunity of hearing.

g. **State of Maharashtra Vs. Milind & Ors., reported in 2001 (1) SCC 4**, on the question that no Court or authority can carry out an enquiry and interpret the Presidential Order in a particular manner, once the entry itself is unqualified is clear.

h. **Harikrishna Lal Vs. Babu Marandi, reported in 2003 (8) SCC 613**, to state that the status of a duly election person cannot be lightly interfered with.

i. **Dipak Babaria Vs. State of Gujarat, reported in 2014 (3) SCC 502**, to state that once the statute requires a particular thing to be done in a particular manner, it has to be done in that manner only, and none else.

j. **K. Lubna Vs. Beevi, reported in 2020 (2) SCC 524**, to state that a pure question of law can be determined at any stage, even before the High Court.

17. Heard the learned counsel for the parties and perused the record.

18. The case involves three questions requiring determination :

a. Whether Rule 40-A of the M.P. Panchayat Nirvachan Niyam 1995, requires the reserved category candidate seeking nomination on a reserved seat, to submit the caste certificate at the time of nomination, or not ?

b. What is the effect of executive instructions issued by the State Election Commission dated 05.12.2014 and of July 2020 ?

c. If submission of caste certificate is not mandatory, whether the Election Tribunal would be denuded of its jurisdiction to rule on the caste status of the candidate even after election and mere submission of affidavit would be sufficient for all times to come ?

19. On a query of the Court, that a person undisputedly of upper caste, can contest election posing himself to be a Tribal or any reserved category person, merely on basis of his own affidavit, and even the Election Tribunal would be helpless in the matter, the learned senior counsel submits that this in fact, is how the rule works out itself.

20. Now proceeding to discuss the questions before the Court.

Requirement of submission of Caste certificate

Rule 40-A of the Nirvachan Niyam 1995 is in question in the present case. The said Rule 40-A states as under :-

40A. Stay on elections in certain cases.- (1) Notwithstanding anything contained in these rules, if it comes to the notice of the Returning Officer at any time prior to the date of poll that the nomination of any candidate who, prima facie, does not belong to a Scheduled Caste, Scheduled Tribe or Other Backward Class, has been accepted for a seat which is reserved for Scheduled Castes, Scheduled Tribes or Other Backward Classes as the case may be, through oversight or want of objection or for any

other reason, he shall forthwith issue a notice to such candidate, asking him to file an affidavit that he belongs to the category for which the seat is reserved.

(2) In case the candidate concerned files an affidavit, the Returning Officer shall make no further inquiry into the matter and treat the nomination as valid.

(3) In case the concerned candidate fails to file an affidavit on or before the date specified in the notice, it shall be presumed that he does not belong to the category for which the seat is reserved and the Returning Officer shall report full facts to the following competent authority, as the case may be and seek its permission to review his own order, regarding the validity of the nomination, namely :-

(i) Sub-Divisional Officer (Revenue) in case of election of a Panch or Sarpanch of a Gram Panchayat;

(ii) Collector in case of election of a member of Janpad Panchayat; and

(iii) Divisional Commissioner in case of a member of Zila Panchayat.

(4) The Competent Authority, shall immediately, dispose off every case referred to it under sub-rule (3), and communicate its order to the Returning Officer, as soon as possible.

(5) After receiving the permission of the Competent Authority, the Returning Officer, may review his own order and exclude the name of the concerned candidate from the list of validly nominated candidates prepared under Rule 35 and from the list of contesting candidates, if such list has already been prepared and published the Returning Officer shall prepare a revised list of contesting candidates and publish it in accordance with the provisions of Rule 40 :

Provided that if the concerned candidate has in the meanwhile submitted an affidavit in response of the notice issued under sub-rule (1), the Returning Officer shall not review his order.

(6) If the Competent Authority fails to dispose off the case referred to it under sub-rule (3) at least five days before the day of poll or the mistake in acceptance of nomination as specified in sub-rule (1), comes to the notice of the Returning Officer on a day where-after a period of less than seven days is left for the day of poll, the Returning Officer shall postpone the election of such seat and report the matter to the Commission through the District Election Officer.

(7) The Commission shall, after satisfying itself that the Returning Officer has duly reviewed his order, issue revised time schedule for completion of election for the seat in question.]

21. If the entire Rule 40-A is seen, it is clear that the said rule operates once after receiving nomination, a dispute is raised as to caste status. Thus, the applicability of this rule starts on occurrence of a dispute as to caste status after receiving nomination, and not at the time of accepting nomination. This Rule only bars the Returning Officer from entering into a question of caste status of the candidate. This rule does not operate that what will be the requirement of a valid nomination. This rule does not lay down in either way, whether submission of caste certificate at the time of making nomination is mandatory, or not. This Rule 40-A is only for the Returning Officer to act at the time of scrutiny of nominations, and nothing else.

22. The nomination of candidates is provided under Rule 31 and 32. It is provided in Rule 31 that the nomination shall be in statutory forms as mentioned in Rule 31. The statutory form of nomination of member of Zila Panchayat will be in form 4 appended to the said Rules.

23. It appears that certain confusion was created after insertion of Rule 40-A in the Rules of 1995, whether it is mandatory for a reserved seat candidate to file caste certificate alongwith nomination form, or not. This seems to have been created by the executive instruction of the State Election Commission dated 05.12.2014.

24. There has been subsequent amendment in the Rules of 1995 and the statutory form of nomination has been replaced vide amendment notification dated 24.4.2019, amending the Rules of 1995. The said amendment notification is as under :-

Government of Madhya Pradesh
Panchayat and Rural Development Department
Mantralaya Vallabh Bhawan

NOTICE

Bhopal Dated 24/04/2019

No. E-16-5-18/22/P-3 In exercise of the powers conferred by sub-section (1) of Section 95 read with section 43 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam 1993 (No. 1 of 1994), the State Government hereby makes the following amendments in the Madhya Pradesh Panchayat Nirvachan Niyam, 1995 which has been previously published in the Madhya Pradesh Gazette dated 1st February, 2019 as required by sub-section (3) of section 95 of the said Act, namely:-

In the said Rules,-

1. In rule-31, for sub-rule (2), the following sub-rule shall be substituted, namely :-
 "(2) Every nomination to be presented under rule-32 shall be in Form-4.";
2. For Form 4-A, 4-B, 4-C and 4-D the following Form shall be substituted, namely :-

"PANCHAYAT ELECTION

Form-4

[See Rule-31]

Nomination Paper

***Member of Zila Panchayat/Member of Janpad Panchayat/Sarpanch/panch**

I, Proposer, Nominate the following for the election of *Member of Zila Panchayat/Member of Janpad Panchayat/Sarpanch/Panch :-

Details of the Post of Election

District		Member of Janpad Panchayat	
Name of Zila Panchayat	Constituency no./Ward no.	Name of Janpad Panchayat	Constituency no./Ward no.

Sarpanch		Panch		
Name of Janpad Panchayat	Name of Gram Panchayat	Name of Janpad Panchayat	Name of Gram Panchayat	Ward No.

Details of the Candidate

1.	Candidate's full Name			
2.	*Sex	Male	Female	Other
3.	Father's/Husband's name of candidate			
4.	Full postal address of candidate			

5. Details of the Candidate's name entered in voter list

Name of Janpad Panchayat	Name of Gram Panchayat	Ward No. of Gram Panchayat	Serial No. in Voter list

Details of the Proposer

6.	Full Name of Proposer			
7.	*Sex	Male	Female	Other
8.	Father's/Husband's name of Proposer			
9.	Full postal address of Proposer			
10.	Mobile No. of Proposer			

11. Details of Proposer's name entered in voter list

Name of Janpad Panchayat	Name of Gram Panchayat	Ward No. of Gram Panchayat	Serial No. in Voter list

* Strike out the word not applicable.

Signature/Thumb impression of Proposer

Date.....

Name

Consent by the Candidate for Nomination

I, the above mentioned candidate, assent to this nomination and my details are as under :-

12	Date of Birth	D	D	M	M	Y	Y	Y	Y
13	Age, as on date of scrutiny (in Years)								
14	Caste/Category (Unreserved/SC/ST/OBC)								
15	Caste Name (In case of member of reserved category)								
16	Name of notified district for caste								
17	Name to be printed on Ballot Paper (in Hindi)								
18	English spelling of Candidate's name to be printed on Ballot Paper								
19	Mobile No. of Candidate								

The above said information is true to the best of my knowledge and belief, I am qualified and also not disqualified for being chosen to the above mentioned post.

.....
Signature/Thumb impression of Candidate

Date.....

Name

Enclosed documents with nomination paper.

S.No.	Details of Documents	Enclosed (Yes/No)
1	Affidavit/Declaration with two extra signed copies regarding declaration of information relating to Criminal antecedent assets, liabilities and educational qualification as per rule-31(A) of the Madhya Pradesh Panchayat Nirvachan Niyam 1995.	
2	Copy of Caste certificate issued by competent authority of Government of Madhya Pradesh in case of a member of reserved category.	
3	Receipt of Security Deposit.	
4	*No Dues Certificate from Electricity Company regarding no outstanding due. As per section-36 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam 1993.	
5	*No Dues Certificate from Zila Panchayat/Janpad	

	Panchayat/Gram Panchayat regarding no outstanding due. As per section-36 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam 1993.	
6	Other -	
7	Other -	

* Strike out the word not applicable.

.....
Signature/Thumb impression of Candidate

Date.....

Name

(To be filled by the Returning Officer)

1	Serial Number of Nomination Paper		
2	Date of presentation of Nomination Paper before Returning Officer		
3	Time of presentation of Nomination Paper before Returning Officer		
4	*Person, who has presented the Nomination Paper before Returning Officer	Candidate	Proposer

**Details of documents enclosed with the Nomination Paper, for which receipt is
provided to the candidate**

(in column number (3) & (4), fill in same details as it is written in the receipt, handed over to
the candidate)

S.No	Details of Documents	Enclosed (Yes/No)	If not enclosed, then time limit for submission of the particular document to the Returning Officer	
			Date & Time	Occasion
(1)	(2)	(3)	(4)	(5)
1	Affidavit/Declaration with two extra signed copies regarding declaration of information relating to Criminal antecedent assets, liabilities and educational qualification as per rule-31(A) of the Madhya Pradesh Panchayat Nirvachan Niyam, 1995.		Affidavit/Declaration is mandatory to be submitted only at the time of presenting Nomination Paper to the Returning Officer.	
2	Copy of Caste certificate issued by competent authority of Government of Madhya Pradesh in case of a member of		Before fixed date and time of scrutiny.	

	reserved category.			
3	Receipt of Security Deposit.			Receipt of Security Deposit is mandatory to be submitted only at the time of presentation of Nomination Paper to the Returning Officer.
4	*No Dues Certificate from Electricity Company regarding no outstanding due. As per Section-36 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhinyam 1993.			Before fixed date and time of scrutiny.
5	*No Dues Certificate from Zila Panchayat/Janpad Panchayat/ Gram Panchayat regarding no outstanding due. As per Section-36 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhinyam 1993.			Before fixed date and time of scrutiny.
6	Other -			
7	Other -			

* Strike out the word not applicable.

.....
Signature of Returning Officer (Panchayat)

Date.....

Name

25. It is clear from a bare perusal of the aforesaid statutory form, that a candidate is required to enclose certain documents with the nomination form, and last date is laid down for each of such documents to be presented. The extract of the relevant portion of the form is as under :-

Details of documents enclosed with the nomination paper, for which receipt is provided to the candidate -

<i>Sr. No.</i>	<i>Details of documents</i>	<i>If not enclosed, then time limit for submission of the particular document to the Returning Officer</i>
2.	<i>copy of caste certificate issued by competent authority of Government of Madhya Pradesh in case of a member of reserved category</i>	<i>Before fixed date and time of scrutiny</i>

(Note- Exact form not reproduced here. It is already part of notification reproduced in preceding pages of this order)

26. Thus, it is clear as noon day that the copy of caste certificate in case of candidate of reserved category is mandatorily to be filed alongwith the nomination form. If not filed with the nomination, it should at the most be filed before the fixed date and time for nomination.

27. The requirement of Rule 40-A starts at the time of scrutiny. If at the time of scrutiny a question arises in the matter of caste status of a candidate, then that Rule 40-A merely bars the Returning Officer from conducting an enquiry into the fact of caste status. It may be due to the objection as to actual caste status of the candidate, or may involve the question whether the certificate itself is forged. Thus, to avoid starting of enquiry as to caste status at the stage of nomination, this provision seems to be engrafted.

28. Thus, from the perusal of Rule 40-A as also the statutory form of nomination, the legal position that can be culled out is, that caste certificate is required to be filed with the nomination, and in any event, before the start of scrutiny of nomination papers. This is a mandatory condition.

29. **Affect of executive instructions dated 05.12.2014 and July 2020 :-**

30. The parties have argued at length as to the interpretation and enforceability of the two executive instructions of 05.12.2014 and July 2020. These instructions have been issued by the State Election Commission. The instructions of 2014 have further been circulated for being followed in 2021-22 elections, vide letter dated .13.12.2021.

31. The relevant portions of the said two instructions are as under :-

a. Instruction dated 05.12.2014 -

“5. अतएव विचारोपरान्त आरक्षित वर्ग के पदों से निर्वाचन लडने वाले अभ्यर्थियों के लिये जाति प्रमाण पत्र के संबंध में आयोग ने निम्न निर्णय लिया है—

(i) पंचायत निर्वाचन में आरक्षित पद से निर्वाचन लड़ने वाले अभ्यर्थी से यह अपेक्षा रहेगी कि वह नामनिर्देशन पत्र के साथ मध्यप्रदेश शासन के सक्षम प्राधिकारी द्वारा जारी शासन द्वारा निर्धारित विहित प्रारूप में जाति प्रमाण-पत्र संलग्न करे।

(ii) यदि अभ्यर्थी के पास नामनिर्देशन पत्र भरते समय जाति प्रमाणपत्र उपलब्ध नहीं है तो अभ्यर्थी को इस वर्ग का सदस्य होने के बावत, जिसके लिये स्थान आरक्षित है, अपना जाति संबंधी शपथ पत्र नामनिर्देशन पत्र की संवीक्षा प्रारंभ होने के पूर्व रिटर्निंग आफिसर के समक्ष प्रस्तुत कर सकेगा।

(iii) मध्यप्रदेश शासन के सक्षम प्राधिकारी द्वारा जारी जाति प्रमाण पत्र प्रस्तुत न करने अथवा आरक्षित वर्ग का सदस्य होने बावत् शपथ पत्र प्रस्तुत नहीं करने की स्थिति में अभ्यर्थी का नाम निर्देशन पत्र निरस्त किया जायेगा।”

b. Instruction of July 2020

“10.14. नामनिर्देशन पत्र—

अब सभी नामनिर्देशन पत्र जिला पंचायत के सदस्य, जनपद पंचायत सदस्य, सरपंच एवं पंच के निर्वाचन के मामले में नवीन प्रारूप-4 में होगा।

सम्यक रूप से भरा हुआ और अभ्यर्थी द्वारा हस्ताक्षरित या अंगूठा निशान लगा हुआ नामनिर्देशन पत्र अभ्यर्थी स्वयं या प्रस्तावक के माध्यम आपको प्रस्तुत करेगा। मध्यप्रदेश पंचायत राज एवं ग्राम स्वराज अधिनियम, 1993 की धारा-14, 27(2)(क) के अनुसार प्रत्येक व्यक्ति, जिसका नाम किसी ग्राम की मतदाता सूची में सम्मिलित है, उस पंचायत जिसके अन्तर्गत वह ग्राम आता है, के पदाधिकारी के रूप में निर्वाचित किए जाने के लिए अर्हित है, यदि वह अन्यथा निरर्ह न हो। इस अधिनियम की धाराओं का उद्धरण संलग्नक-8 में है। नामनिर्देशन पत्र के साथ आरक्षित वर्ग का सदस्य होने की दशा में मध्यप्रदेश शासन के सक्षम प्राधिकारी द्वारा जारी जाति प्रमाणपत्र की प्रति संलग्न करना आवश्यक है।”

“10.25. अनुसूचित जाति, अनुसूचित जनजाति या अन्य पिछड़े वर्ग के अभ्यर्थी के लिये नामनिर्देशन-पत्र में सुसंगत स्थान पर अपनी जाति/वर्ग, जाति के लिए अधिसूचित जिले के नाम सहित स्पष्ट उल्लेख करना आवश्यक है। केवल अनुसूचित जाति या जनजाति या पिछड़े वर्ग का सदस्य जाति के लिए अधिसूचित जिले का नाम होना लिख देना या प्ररूप में मुद्रित इन शब्दों के सामने केवल सही का निशान () लगा देना पर्याप्त नहीं है। वास्तविक जाति/वर्ग, जाति के लिए अधिसूचित जिले के नाम का यदि उल्लेख न किया गया हो, तो ऐसा करने को कहा जाए। आरक्षित वर्ग का सदस्य होने की दशा में मध्यप्रदेश शासन के सक्षम प्राधिकारी द्वारा जारी जाति प्रमाणपत्र की प्रति संलग्न करवा ली जाये।”

32. It is settled in law that Executive Instructions cannot over-ride the statutory law. The State Election Commission traces its existence to Article 243-K of the Constitution of India. Nowhere in the Constitution or in the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam 1993, any power has been vested in the State Election Commission to dilute any provision of the Act and the Rules framed thereunder.

33. The instruction of 05.12.2014 seems to have been framed before amendment in statutory form of nomination and thus, did not run contrary to the Rules of 1995. The Executive Instruction of July 2020 seems to be correctly issued in line with the statutory form of nomination replaced in 2019 by amendment in Rules of 1995. However, it seems that the State Election Commission compounded the confusion by circulating the old instruction of 2014 for 2021-22 elections vide letter dated 13.12.2021.

34. It is settled in law that an executive instruction contrary to law cannot operate and an instruction not authorised by law is not binding

even on the authority issuing it. In the present case, the circular of the State Election Commission dated 13.12.2021 was clearly unauthorised because it could not circulate an executive instruction of 2014 for 2021-22 elections, after the Rules were amended in 2019.

35. A constitution Bench of the Supreme Court in the case of **State of Maharashtra Vs. Milind & Ors., reported in 2001 (1) SCC 4**, has held in para - 33 as under :-

“..... the circulars/ resolutions/ instructions issued by the State Government from time to time, some times contrary to the instructions.

issued by the Central Government, are of no consequence. They could be simply ignored as the State Government had neither the authority nor the competency to amend or alter the Scheduled Tribes Order

36. Thus, I have no hesitation in holding that the circular dated 13.12.2021 issued by the State Election Commission whereby the executive instructions of 05.12.2014 were circulated to be followed for 2021-22 election, was clearly unauthorised insofar as the requirement to file copy of caste certificate with nomination paper is concerned. This is because it runs contrary to the 2019 amendment in the Rules of 1995 whereby the form of nomination was replaced. Thus, the candidates did not get any immunity from filing copy of caste certificate alongwith the nomination form. The Returning Officer could at the most accept a copy of the caste certificate before the start of scrutiny, and not later than that.

37. As in the present case, the petitioner did not have copy of the caste certificate, his nomination paper itself was faulty and the Returning Officer ought to have rejected the same at the time of scrutiny itself. Affidavit can be accepted only from those reserved category candidates who have otherwise filed caste certificate and then objections are raised as to their caste status.

38. Therefore, in my opinion, the Election Tribunal has not erred in holding the nomination form of the petitioner to be liable to be rejected.

Whether the Election Tribunal would be denuded of its jurisdiction to rule on the caste status of the candidate even after election and mere submission of affidavit would be sufficient for all times to come ?

39. This question is only of academic interest once it has been held above that filing of caste certificate at the time of nomination is mandatory requirement for Panchayat Elections. The Election Tribunal could not have entered into enquiry of caste status because the nomination itself was illegal, being filed without caste status certificate.

40. In those cases where there is no requirement to file caste certificate, then the Tribunals may have the limited jurisdiction to decide the question of caste status to ascertain whether the candidate was qualified to be chosen to the seat. It has been held by a 3-Judge bench of the Supreme Court that any order of Election Tribunal ruling on the caste status will not have any further effect, and would have effect only as regards that particular election. It will not even have

effect on future elections. It will not declare a caste status of the person *in rem* for all times to come for all purposes. In the case of **Satru Charla Vijaya Rama Vs. Nimmaka Jaya Raju, reported in 2006 (1) SCC 212**, it has been held in para – 6 & 21 as under :-

6. First, we will deal with the contention based on the adjudication in EP No. 13 of 1983. That was an election petition relating to an earlier election in respect of the same assembly constituency filed by a voter challenging the eligibility of the appellant to contest as belonging to Scheduled Tribe. The learned Judge noticed that the election petitioner had not examined anyone belonging to the “Kshatriya” community to show that the appellant had been accepted as a “Kshatriya” and had also not led adequate evidence to show that the appellant was not accepted as a member of the “Konda Dora” tribe. In his view, the explanation of the appellant that they had claimed the status as “Kshatriyas” only for prestige was adequate to wipe out the effect of the consistent admissions contained in some documents and the entry in the secondary school-leaving certificate. It was thus held that the election petitioner therein, had not chosen to lead any evidence worth the name to show that the appellant was a “Kshatriya” and he had only tried to pick holes in the evidence adduced on the side of the appellant. In the light of the evidence on the side of the appellant, it had to be held that the appellant belonged to the “Konda Dora” tribe and that his nomination was rightly accepted.

21. What we are left with is the high evidentiary value that may be attached to the judgment in EP No. 13 of 1983. It is true that some of the documents produced in the present election petition

were also available before the Judge assigned to try the previous case. But ultimately the conclusion in the previous case was based on an appreciation of the evidence adduced in that case. Some evidence may be common. But, since it is not possible to accept the contention that the earlier judgment is a judgment in rem or that it would operate as res judicata, we can at best proceed on the basis that on an earlier occasion, it was adjudicated that he was not shown to be disqualified to contest from a reserved constituency. But as emphasised by learned counsel for the respondent election petitioner, that was a conclusion arrived at based on an appreciation of the evidence in that case and once that judgment could not be held to be a judgment in rem binding on the whole world or a judgment that bars the trial of the issue in the present election petition or would operate as res judicata between the parties, that judgment by itself is not sufficient to rebut the evidence available in the present case based on which the finding has been rendered.

41. However, this issue need not be dealt with further, because this court has already held above, that the nomination form of the petitioner was defective as it was filed without a copy of caste certificate.

42. The other grounds raised by the learned counsel for the petitioner, regarding the framing of issues and procedure followed by the Election Tribunal, do not require consideration once this Court has held that the nomination form itself was not proper, being filed without caste certificate.

43. Before parting with the case, it is to be held that the finding of the Election Tribunal, that the Bagri people in Seoni District are not actually Bagri of SC category, as mentioned in para 6.7 of the impugned order annexure P-16, is transgression of its jurisdiction by the Tribunal. This line is as under :-

“सिवनी जिले में बागरी/बागड़ी जाति को शासन द्वारा अनुसूचित जाति के सदस्य के रूप में मान्य नहीं किया गया है। अतः इस आधार पर रिटर्निंग आफिसर (जिला पंचायत), सिवनी का इनका नाम निर्देशन पत्र को निरस्त किया जाना था।”

44. The Election Tribunal could not give such finding which goes contrary to Presidential Order, because the Presidential Order does not restrict the caste status of Bagri people to particular district (s) of the State. The question whether a particular person is a genuine Bagri and is belongs to SC category or not, has to be decided on the case to case basis. Thus, the aforesaid line in para 6.7 is quashed. The petitioner if he applies for the caste certificate, his application would be considered without being influenced by any observation made in the order annexure P-16 as to caste status of the petitioner and the right of Bagri people of Seoni District to be recognised as Bagri of SC category as commented upon in para 6.7 of order Annexure P-7 and quoted above.

45. In the result, the petition fails and is dismissed, however, with the observation as made in the preceding para.

(VIVEK JAIN)
JUDGE