REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4805 OF 2013
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 19296 of 2013

KALPANA DILIP BAHIRAT **Petitioner(s)**

VERSUS

PUNE MUNICIPAL CORP.& ORS. **Respondent(s)**

JUDGMENT

Leave granted.

2. This is an appeal against the judgment dated 9th April, 2013 of the Bombay High Court in Writ Petition No. 3315 of 2013 by way of special leave petition under Article 136 of the Constitution.

3. The facts very briefly are that the appellant contested election to the Pune Municipal Corporation held in December, 2011 to a seat reserved for Other Backward Classes and filed as proof of his caste a caste certificate dated 3-7-2008 issued by the competent authority and caste validity certificate dated 26-8-2010 purportedly issued by the Caste Scrutiny Committee under the Maharashtra Schedule

Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short 'the 2000 Act'). She was declared elected as a Corporator for Ward No. 40-A on 17-02-2012. Mrs. Laxmi Balasaheb Ghodake, who also contested the election as a member of Other Backward Class filed Election Petition No. 26 of 2012 before the Court of the Principal Judge of Small Causes, Pune challenging the election of the appellant. Though the election petition is pending and has not been decided, the Commissioner of Municipal Corporation on receiving information that the Caste Certificate, on the basis of which the appellant contested the election, was never actually issued by the concerned Caste Scrutiny Committee, passed an order dated 26th March, 2013 holding that the appellant has not submitted genuine caste certificate and because of that her election is ab-initio null and void and declaring that the seat of Pune Municipal Corporator from Ward No. 40-A has become vacant retrospectively from the date of election of the appellant. Aggrieved, the appellant filed Writ Petition No. 3315 of 2013, but by the impugned judgment and order, the High Court has

refused to entertain the writ petition on the ground that the appellant did not approach the High Court under Article 226 with clean hands. Hence, the appellant has preferred the present appeal before this Court.

4. Mr. V.A. Mohta, learned senior counsel appearing for the appellant submitted that the main contention urged before the High Court by the appellant was that Article 243ZG of the Constitution provides that no election to any municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State notwithstanding anything in the Constitution. He submitted that since the appellant had been elected to the Municipality, her election could be called in question only by an Election Petition filed under Section 16 of the Bombay Provincial Municipal Corporations Act, 1949 (for short 'the 1949 Act'). He submitted that the High Court has not gone into this question and has dismissed the writ petition of the appellant on irrelevant grounds.

5. Mr. Shekhar Naphade, learned senior counsel appearing for the Municipal Corporation, on the other hand, referred to the provisions of Section 5B of the

1949 Act to submit that a person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or Backward Class as the case may be, has to submit along with the nomination paper, a caste certificate issued by the competent authority and a validity certificate issued by the Scrutiny Committee in accordance with the provision of the 2000 Act. He further submitted that sub-section (4) of Section 10 of the 2000 Act clearly provided that notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false caste certificate as belonging to such caste, tribe or class on such false caste certificate being cancelled by the Scrutiny Committee and the election of such person shall be deemed to have been terminated retrospectively from the date of his election.

6. In rejoinder, Mr. Mohta submitted that the appellant belongs to the Other Backward Class and her

claim that she belongs to the other Backward Class has not been decided by the Caste Scrutiny Committee and, therefore, the provisions of Section 10 of the 2000 Act will not apply would be clear from sub-section (1) of Section 10 of the 2000 Act.

7. We have considered the submissions of the learned senior counsel for the parties and we find that Section 5B of the 1949 Act provides as follows:

> **5B. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate.**
>
> **Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of citizens, shall be required to submit, along with the nomination papers, Caste certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.**

The language of the aforesaid provision makes it clear that the nomination paper of a candidate contesting from a seat reserved for Scheduled Castes, Scheduled Tribes or Backward Class citizens has to be accompanied by a Caste Certificate issued by a competent authority and the Validity Certificate issued by the Scrutiny Committee in accordance with

the provisions of the 2000 Act. In this case, the nomination of the appellant was accompanied by a caste validity certificate purported to have been issued by the Scrutiny Committee constituted under the 2000 Act and admittedly Scrutiny Committee has not issued the caste validity certificate which accompanied the nomination paper. In other words, admittedly, the certificate which accompanied the nomination of the appellant was a false certificate and was not required to be cancelled by the Caste Scrutiny Committee.

8. We have perused sub-section (1) of Section 10 of the 2000 Act and we find that it applies to admission to reserved seat in an educational institution and to appointment to a reserved post in the Government, local authorities, Government Corporations, Government aided institutions or co-operative societies and will not be attracted to the facts of the case. Instead, the consequences as provided in sub-section (4) of Section 10 of the 2000 Act will follow. Sub-Section (4) of Section 10 reads :

> **"Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by**

> **procuring a false caste certificate as belonging to such caste, tribe or class on such false caste certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."**

The consequence is that the election of a person who has contested on a seat reserved for the aforementioned categories on false caste certificate as belonging to such caste, tribe or class "shall be deemed to have been terminated retrospectively". The deeming provision in sub-section (4) of Section 10 of the 2000 Act is a statutory fiction which has to be given effect to and the Commissioner of the Municipal Corporation has given effect to the deeming provision and has thus acted in accordance with law.

9. Mr. Mohta is right that in view of the provisions of Article 243ZG of the Constitution, the election of a person elected to the Municipality can only be called in question by an Election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of the State and Section 16 of the 1949 Act provides for the manner in which election to any municipality can be called in question, but the opening words of sub-section (4) of Section 10 of the 2000 Act, provide that "notwithstanding anything contained in any law

for the time being in force", which obviously will also include Section 16 of the 1949 Act, the deeming provision in sub-section (4) of Section 10 of the 2000 Act will have to be given effect to and will not await the outcome of an election petition. We, therefore, maintain the order passed by the High Court for the reasons indicated in this judgment.

10. We however make it clear that it will be open for the appellant to pursue her claim before the Caste Scrutiny Committee that she is entitled to a caste certificate as a person belonging to Backward Class and the Caste Scrutiny Committee will consider the same on its own merits in accordance with the decisions of this Court including the decision in *Anand* Vs. *Committee for Scrutiny and Verification of Tribe Claims* (2012) 1 SCC 113. We also make it clear that in case the appellant is furnished with a caste certificate by the Caste Scrutiny Committee, she will be entitled to contest the election on the basis of such Caste Certificate irrespective of what we have said in this order.

11. Considering the facts and circumstances of the case, the costs awarded by the High Court are deleted. The interim order dated 17th June, 2013 passed by this Court stands vacated and the appeal and the

interlocutory application No. 4 stand disposed of accordingly.

.....J.
(A.K. PATNAIK)

.....J.
(RANJAN GOGOI)

NEW DELHI,
JUNE 27, 2013