

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF DECEMBER, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

**ELECTION PETITION NO.19 OF 2023**

**R**

**BETWEEN:**

SHRI. G.SWAMY,  
BASAVANAGIRI HADI A VILLAGE,  
H.D.KOTE TALUK,  
MYSORE DISTRICT - 571114.

...PETITIONER

(BY SMT. PRAMILA NESARAGI, SR. COUNSEL FOR  
DR. J.S.MADHUKUMAR, SRI. NARENDRA PATGAR AND SMT.  
BINDU.U, ADVOCATES)

**AND:**

B.DEVENDRAPPA,  
#28, CHIKKAMANAHATTI,  
JAGALUR TALUK,  
DAVANAGERE DISTRICT - 577528.

...RESPONDENTS

(BY SRI.SHASHIKIRAN SHETTY, SR.COUNSEL FOR SRI.A. MAHESH  
CHOUDHARY & KRISHIKA VAISHNAV, ADVOCATES)

THIS ELECTION PETITION IS FILED UNDER SEC. 80, 81, 82(A), 100, 101, 125-A, 100 (1) (D) (IV), 19 OF THE REPRESENTATION OF PEOPLES ACT 1951., PRAYING TO DECLARE THAT ON THE DATE OF ELECTION ON 10.05.2023 AND DECLARATION OF THE RESULT ON 13.05.2023, THE RESPONDENT NO.1 WAS NOT QUALIFIED TO BE CHOSEN TO BE FILE THE SEAT RESERVED FOR THE SCHEDULE TRIBE 103 JAGALUR ASSEMBLY CONSTITUENCY UNDER THE CONSTITUTION R/W SECTION 5 OF THE REPRESENTATION OF PEOPLE ACT UNDER SECTION 100 (1) (A) (D)(IV) OF THE REPRESENTATION OF PEOPLE'S ACT. THE RESPONDENTS NO.2 TO 6 WERE ALSO NOT QUALIFIED TO CONTEST THE ELECTION. SINCE RESPONDENTS 2 AND 6 BELONG TO A BACKWARD COMMUNITY AND ARE NOT ELIGIBLE TO CONTEST ELECTIONS IN THE ST RESERVED CONSTITUENCY AND ETC..



I.A.2/2024 IS FILED UNDER ORDER VII RULE 11(a) AND (d) OF CIVIL PROCEDURE CODE, 1908, PRAYING TO REJECT THE PETITION FILED BY THE PETITIONER, AS THE SAME LACKS CAUSE OF ACTION AND IS BARRED BY LAW.

THIS I.A.2/2024 HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.11.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

**CAV ORDER**

**ON I.A.2/2024**

*"Whether the Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990, takes away the jurisdiction of the High Court, to decide an election dispute questioning the caste of a returned candidate to the Legislative Assembly."* This is the precise question that falls for consideration, in this election petition.

2. The petitioner has questioned the respondent's election to Jagaluru Vidhanasabha Constituency. Admittedly, Jagaluru Vidhanasabha Constituency is reserved for Scheduled Tribe. According to the petitioner, the respondent does not belong to Scheduled Tribe. The petitioner alleges that the respondent belongs to Other Backward Community, and is ineligible to contest the

election. This is the sole ground on which the petition is filed.

3. The respondent returned candidate not only opposed the petition, but also filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, ('Code') to reject the petition on three grounds;

- (a) Material facts not pleaded and there is no cause of action,
- (b) The petition is barred under law;
- (c) The petition is barred by *res judicata*.

4. The petitioner has opposed the said application.

5. Heard Smt.Pramila Nesaragi, learned Senior Counsel appearing for the petitioner and Sri. Shashikiran Shetty, learned Senior Counsel appearing for the respondent.

6. Learned Senior counsel appearing for the respondent-applicant submits that the petitioner himself has produced the caste certificate issued in favour of the respondent, which reveals that the respondent belongs to

the Scheduled Tribe. The Tahasildar has issued the caste certificate. Tahasildar's jurisdiction to issue the caste certificate is not questioned. Thus, there is no cause of action to file the petition.

7. It is urged that 'material facts' constituting the cause of action are not pleaded in the petition. The facts for disbelieving or doubting the respondent's caste are not pleaded, as such the petition is to be rejected for not pleading material facts constituting the cause of action.

8. Sri. Shashikarn Shetty would also urge that the caste certificate, issued in favour of the respondent holds good till it is cancelled by the District Caste Verification Committee ('DCVC' for short). Only the DCVC formed under the Karnataka Scheduled Castes Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.,) Act, 1990 ('the Act of 1990', for short), has the jurisdiction to decide on the validity of the caste certificate. Thus, the election petition questioning the respondent's caste is not maintainable and impliedly barred in view of the Act of 1990.

9. In support of his contention, learned Senior counsel has relied on the following judgments:

- (i) *EP No.6/2018 (DD:-08.06.2020)*  
*[H.P.Rajesh Vs. S. V. Ramachandra]*
- (ii) *2023 SCC Online 573*  
*[Khanimozhi Karunanidhi Vs.A. Santhana Kumaru and Others]*
- (iii) *(2001) 8 SCC 233*  
*[Harish Anker Jain Vs. Sonia Gandhi]*
- (iv) *(1998) 2 SCC 70*  
*[ITC Limited Vs. Debt Recovery Appellate Tribunal]*
- (v) *(2012) 8 SCC 706*  
*[Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust]*
- (vi) *(2009) 10 SCC 541*  
*[Ramshuk Vs. Dinesh Aggarwal]*
- (vii) *(2020) 7 SCC 366*  
*[Dahiben Vs. Aravind Bhai]*
- (viii) *EP No.4/2013 (DD:- 25.04.2018)*  
*[Sri N.Manianjappa Vs G.Manjunatha and others]*
- (ix) *CA No.4533/2018 (DD:- 30.01.2020)*  
*[G. Manjunatha and Manianjappa and Ors].*
- (x) *WP No.2841/2023 (DD:- 20.12.2023)*  
*[G. Manjunatha and The State of Karnataka and Ors.]*
- (xi) *2024 SCC OnLine Bom 2944*  
*[Narsingrao Vs Shivaji and Others]*

10. Learned Senior counsel appearing for the petitioner, opposing the application would contend that, it

is only the High Court, under the Representation of the People Act, 1951 (Act of 1951) which has the jurisdiction to try the questions raised in the petition. The respondent does not belong to the Scheduled Tribe yet he contested from a constituency reserved for Scheduled Tribe. Since the respondent belongs to Other Backward Classes in the State of Karnataka, he is ineligible to contest the election in the constituency reserved for Scheduled Tribe. Thus the election petition is maintainable.

11. It is further urged that the facts disputing the status of the respondent's caste as Scheduled Tribe are averred in the petition. It is averred that the Respondent belongs to Myasa Nayaka Community which is not a Scheduled Tribe and is a Backward Caste. These material facts constitute the cause of action.

12. Learned Senior Counsel has relied on the following judgments in support of her contention:

- (i) *1994(6) SCC 241*  
*[Kumari Madhuri Patil and another V/s Addl. Commissioner Tribal Development and others]*
- (ii) *2012(1) SCC - 333*

*[Dayaram V/s Sudhir Batham and others]*

(iii) 2005(2) SCC-244  
*[Sobha Hymavathi Devi V/s Setti Gangadhara Swamy and others]*

13. The following points arise for consideration:

- i) *Whether there is a cause of action to file the election petition?*
- ii) *Whether the election petition disputing the caste of a returned candidate from a constituency reserved for Scheduled Tribe, is maintainable or the aggrieved party has to wait till the decision on this issue by the District Caste Verification Committee?*

14. **On the cause of action:**

14.1. This Court has referred to the judgments cited by the learned counsel for the respondent on the "cause of action" and "material facts". The settled position of law is that the expression "cause of action" would mean every fact that would be necessary for the plaintiff to prove, if traversed, to get a relief claimed.

14.2. After going through the petition, it is evident that the petitioner contends that the respondent belongs to Myasa Nayaka community and the community is backward in the State of Karnataka. Reference is also made to some geographical area from where the said community hails. In the petition it is stated that the respondent deliberately and fraudulently suppressing the facts, made a false claim that he belongs to the Scheduled Tribe. It is also pleaded no documents are produced to establish that the respondent belongs to the Scheduled Tribe before securing the caste certificate.

14.3. Admittedly, Jagaluru Assembly Constituency is reserved for Scheduled Tribe. In case, the petitioner succeeds in establishing that respondent does not belong to the Scheduled Tribe, then the respondent's election has to be set aside. This being the position, the contention that there are no material facts



constituting the cause of action has to be rejected. The judgments cited by the respondents to contend that material facts not pleaded, and there is no cause of action, cannot be made applicable to the present petition considering the petition averments.

14.4. Now the question is, whether the cause of action arises only in the event of the DCVC, cancelling the caste certificate issued by the Tahasildar. Before considering this question, the Court has to consider the scope and width of the High Court's jurisdiction to decide an election dispute under the Act of 1951.

**15. On the question of bar to decide on the returned candidate's caste in an election petition.**

15.1. Learned Senior Counsel appearing for the respondent stressed the judgment of the coordinate bench of this Court in **EP No.6/2018 (H.P. Rajesh)** to contend that the Court dealing with the election petition has no

jurisdiction to decide on the returned candidate's caste.

15.2. The co-ordinate Bench of this Court in paragraph No. 15 of the said judgment has held as under:

*"A plain reading of the above provision would indicate that the State Government is required to constitute one or more verification committees for each district for verification of caste certificate or income and caste certificate issued under Section 4-A and 4-B. Any person who has obtained caste certificate or income and caste certificate or any authority admitting such person to study or educational institution is entitled or empowered to make an application to the DCVC for issue of a validity certificate of a certificate issued under Section 4-A or 4-B. If In the opinion of the DCVC, a person has obtained a false caste certificate or income and caste certificate, it may, after holding such enquiry as it deems fit, either grant a valid certificate in the prescribed form or reject the application within 30 days from receipt of the said application. In other words, the validity or otherwise of the caste certificate issued under the Act can be*

decided by the said committee and none else".

*(Emphasis supplied)*

15.3. **EP No.6/2018** was an election petition, questioning the returned candidate's caste. The returned candidate in the said petition filed an application to dismiss the petition on the premise that the petition has become infructuous as DCVC, during the pendency of the election petition has upheld his caste certificate.

15.4. The co-ordinate Bench of this Court in the said EP No.6/2018 concluded that the validity of the caste certificate issued under the Act of 1990 can be decided only by the Committee under the Act and none else.

15.5. The co-ordinate Bench of this Court in EP No.6/2018 dealt with the provisions of the Act of 1990 and also referred to the judgments of the Hon'ble Apex Court in the case of

(i) ***Bharati Reddy Vs. State of Karnataka***<sup>1</sup>,  
(ii) ***Shipping Corporation of India Ltd., Vs. Machado Brothers and Others***<sup>2</sup>, (iii) ***State of Maharashtra Vs. Raviprakash***<sup>3</sup> (iv) ***State of Maharashtra and Others Vs. Sanjay K. Nimje***<sup>4</sup>, (v) ***Kumari Madhuri Patil and another Vs. Addl. Commissioner Tribal Development and others***<sup>5</sup> (vi) ***Dayaram Vs. Sudhir Batham and others***<sup>6</sup>, and (vii) ***Ayaaubkhan Noorkhan Pathan Vs. State of Karnataka and Others***<sup>7</sup>, and concluded that the order passed by the DCVC has become final and the question on the caste of respondent's candidate cannot be gone into in an election petition.

15.6. This Court has considered the judgments referred to above. In any of the judgments referred to by the co-ordinate Bench, the scope

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<sup>1</sup> (2018) 6 SCC 162

<sup>2</sup> (2004) 11 SCC 168

<sup>3</sup> 2007 1 SCC 80

<sup>4</sup> (2007) 14 SCC 451

<sup>5</sup> 1994(6) SCC 241

<sup>6</sup> 2012(1) SCC – 333

<sup>7</sup> (2013) 4 SCC 465

of Sections 80 and 80A of Act of 1951 and the effect of Act of 1990 on the jurisdiction of the High Court under Sections 80 and 80A of Act of 1981 are not considered. Though it is contended that in an election petition, the High Court has no jurisdiction to decide the caste of the returned candidate, the Court's attention is not drawn to Sections 80 and 80A of the Act of 1951.

15.7. The jurisdiction of the High Court in deciding the election petition is governed by the provisions of the Act of 1951. Thus it is imperative to consider the provisions of the Act of 1951 governing the jurisdiction of the High Court in an election petition.

15.8. Sections 80 and 80A of the Act of 1951, read as under:

**80. Election Petitions.**—No election shall be called in question except by an Election Petition presented in accordance with the provisions of this Part.

**80A. High Court to try election petitions.—**

(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice, shall, from time to time, assign one or more Judges for that purpose: Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of the seat of the High Court.

15.9. Under Section 80 of the Act of 1951, a dispute relating to the elections covered under the Act of 1951, can be raised only in an election petition presented in accordance with Chapter II of the Act of 1951 and Section 80A provides that only the High Court shall have the jurisdiction to decide the Election Petition.

16. The next question is, **what are the grounds available under the Act of 1951 to challenge an election?**

16.1. Section 100 provides for the grounds to invalidate or declare an election as void. Section 100 (1)(a) relevant for this case reads as under:

**100. Grounds for declaring election to be void.—**

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—(a)that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963);

16.2. Under Section 100(1)(a) of the Act of 1951, the election of a returned candidate can be questioned if he was not qualified or disqualified to be chosen.

17. Now the Court has to refer to the provision prescribing qualification or disqualification to contest an election.

17.1. Section 5(a) of the Act of 1951, is relevant for the discussion and the relevant portion reads as under:

**5(a). Qualifications for membership of a Legislative Assembly.—**

A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

17.2. If a constituency is reserved for the Scheduled Castes or the Scheduled Tribes of the State, then, a person who does not belong to that particular caste for which the constituency is reserved, is ineligible to contest the election.



17.3. On a conjoint reading of Sections 80, 80A, 100(1)(a) and Section 5(a) of the Act of 1951, it is explicit the election petition questioning the election of a returned candidate on the ground that the returned candidate does not possess the prescribed qualification has to be decided only by the High Court in the exercise of jurisdiction under Section 80A of the Act of 1951 and none else.

18. Now the question is whether the specialized forum to decide the validity of a caste certificate under the Act of 1990, takes away the jurisdiction of the High Court to decide the question of ineligibility premised on the caste of a returned candidate.

18.1. At this juncture, it is necessary to refer to the Act of 1990. The object of the Act of 1990 reads as under:

“An Act to provide for the reservation of appointments or posts in favour of the members of the Scheduled Castes, Scheduled Tribes and other Backward

Classes in the State Civil Services and establishments in the public sector and in admission to universities and to the educational institutions established or maintained or aided by the State Government.

WHEREAS the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens are not adequately represented in the services or posts in the State Civil Services and establishments in public sector and among the students admitted to the universities and educational institutions established or maintained or aided by the State Government;

AND whereas it is expedient to provide in favour of them such reservation”

18.2. The object, of the Act of 1990, is to facilitate the reservation in appointments in favour of members in the Schedule Castes, Scheduled Tribes and Other Backward Classes in certain sectors. Section 4 of the Act of 1990 provides for reservation to Scheduled Caste, Scheduled Tribes and Other Backward Classes in State

Civil Services and establishments in the Public Sector, and in admission to the Universities and to the Education Institutions established or maintained or aided by the State Government. The Rules framed there under also provide for the procedure of issuing caste certificates, and appeals by the aggrieved person and also provide for the Committee to verify the caste and income certificate issued under the Act.

18.3. This Act of 1990 does not deal with the election dispute at all. More importantly, the fundamental question is whether the State has the power to legislate over the matters concerning the election to a Legislative Assembly.

18.4. Under Entry No.72 in List-I of Seventh Schedule of the Constitution of India, it is the Parliament which has the power to legislate relating to the election of the Member of the Parliament and the Member of the Legislative Assembly.

18.5. The power of the State to legislate on the matters relating to election to the Legislative Assembly is in Entry No.37 of List-II of the Seventh Schedule. Said entry reads as under:

*a. Elections to the Legislature of the State subject to the provision of any law made by the Parliament.*

18.6. Entry No.37 enables the State to make law relating to the Elections to the Legislature of the State, subject to the law made by the Parliament. However, the Act of 1951, the law made by the Parliament dealing with election to the Legislative Assembly is in force and the said Act does not provide any such power to the State. Thus, the Act of 1951 governs the election to the Legislative Assembly of a State.

19. Now the Court has to consider the source of power to enact the Act of 1990.

19.1. The power of the State to legislate in respect of matters relating to civil service under the State is covered under Entry No.41, in List-II of

Seventh Schedule of the Constitution of India. Insofar as the power to legislate on education is concerned same is traceable to Entry No.25 in list III of VII schedule.

19.2. As already noticed, the State's power to legislate on the election to the Legislative Assembly is subject to the law made by the Union. It is evident from the Act of 1990, that the State has not dealt with the matters relating to Election to Legislative Assembly.

20. For the aforementioned reasons, it is apparent that the Act of 1951, made by the Parliament and the Act of 1990 by the State operate in different fields. The Act of 1990 does not provide anything concerning the Election to the Legislative Assembly. Such a thing was never intended by the State legislature at all.

21. In addition, the Parliament enacted the Act of 1951 in exercise of power under the Union List. The State has passed the Act of 1990 in exercise of power under State List insofar as the provision relating to the service

under the State and insofar as the provision relating to admission to an educational institution is concerned, the legislation appears to be under Entry No.25 in the concurrent list.

22. The Act of 1990 is not sent to the President for assent. The Governor has assented the said Legislation. This being the position, in view of Article 254 of the Constitution of India, even assuming that there is any inconsistency in the Act of 1951 and Act of 1990, or that the provisions of both Acts overlap, the Act 1951 being the central legislation prevails over.

23. Learned Counsel for respondent relied on the judgment of the Hon'ble Apex Court in the case of **G. Manjunatha Vs. N. Muninanjappa** in **Civil Appeal No.4533/2018**. The Hon'ble Apex Court in the said case has referred the dispute relating to the returned candidate's caste to the Committee. The relevant portion of the order reads as under:

*"Therefore, we are informed by the learned counsel appearing at the Bar that there is a specialized committee which has been set up*

*by the State of Karnataka to determine the various caste claims that are made for purposes such as employment and admissions to the educational institutions. However, it is certain that the Verification Committee is a specialized committee which ordinarily looks into such matters and determines the validity of caste claims. **Therefore, in exercise of our power under Article 142 of the Constitution of India, we consider it appropriate to refer the following question to the said committee for determination:***

*(1) Whether the appellant viz., G.Manjunatha belongs to the scheduled caste known as 'Budaga Jangama' or whether he belongs to the 'Byragi' caste of other Backward Classes in the State of Karnataka."*

*(emphasis supplied)*

24. On a reading of the aforementioned judgment, it is evident that the Hon'ble Apex Court has exercised its jurisdiction under Article 142 of Constitution of India to refer the matter to the Committee (under the Act of 1990). This judgment is not a law deciding the issue relating to the jurisdiction of the High Court to decide the disputed question of caste of a returned candidate in an election petition, under the provisions of the Act of 1951.

25. In the aforementioned judgment, the scope of Sections 80 and 80A of Act of 1951, and the implication of Act of 1990 on Sections 80 and 80A of Act of 1951, are not considered and decided. Hence, the said judgment does not assist the respondent to contend that the High Court exercising jurisdiction of Section 80 and 80A of the Act of 1951 is denuded of its jurisdiction to decide on the caste of the returned candidate.

26. In ***Shobha Hymavathidevi*** (supra), the three Judges Bench of the Hon'ble Apex Court while dealing with the jurisdiction of the Court to decide on the validity of the caste of the returned candidate in paragraph No.11 of the judgment has held as under:

*"11.xxxxxxxxxx What remains is the argument based on the certificate allegedly issued under the Andhra Pradesh (Scheduled Caste, Scheduled Tribes and Backward Classes) regulation of the issue of community certificates Act, 1993. The High Court has not accepted the certificates as binding for the reason that the evidence showed that the certificates were issued based on the influence exercised by the appellant as the member of Legislative Assembly, one after*



*another, immediately on an application being made and without any due and proper enquiry. We are impressed by the reasons given by the High Court for not acting on these certificates. That apart a reference to Section 3 of the Act would indicate that a certificate thereunder, insofar as it relates to elections is confined in its validity to elections to local authorities and co-operative institutions. It does not embrace an election to the Legislative Assembly or to Parliament. Therefore, in any view of the matter, it cannot be said that the High Court, exercising jurisdiction under the Representation of the People Act in an election petition is precluded from going into the question of status of a candidate or proceeding to make an independent inquiry into that question in spite of the production of a certificate under the Act. "*

*(Emphasis supplied)*

27. From the aforementioned judgment, it is explicit that the Apex Court has concluded that the jurisdiction of the High Court to decide on the eligibility of a returned candidate with reference to his caste is not taken away by Andhra Pradesh (Scheduled Caste, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (for short 'the Act of 1993').

28. From the aforementioned judgment, it is noticed that the Act of 1993 in Andhra Pradesh provided for issuing caste certificates for various purposes. However, for election, the caste certificate was issued under the Act of 1993 only for election to co-operative Societies as well as local authorities.

29. Whereas, in the State of Karnataka, under the Act of 1990, the caste certificate is issued only for the purpose of securing admission to educational institutions and civil services or civil posts under the State.

30. The certificate issued under Rule 3A(2)(3) of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (reservation of appointments etc.,) Rules, 1992 (for short 'Rules 1992'), though does not specify that the certificate would apply only for employment and admission to educational institutions, since the Act of 1990 in terms of Section 4, provides for issuance of certificate for appointment to any office in a civil service or civil post in the State of Karnataka and Section 4A of the Act of 1990 provides for issuance of

certificate to secure admission to any educational institution, the certificate issued under the Rules of 1992 cannot traverse beyond the scope of the parent Act of 1990. Hence, the certificate issued under the Rules of 1992 has nothing to do with the certificate issued for election to the legislative assembly.

31. It is not the case of the respondent that the certificate is issued in favour of the respondent under the Act of 1990. It is stated that the caste certificates to contest elections are issued under a Government Notification. This being the position, the validity of the caste certificate issued in favour of the respondent which enabled the respondent to contest from a reserved constituency, cannot be a subject matter of scrutiny before the DCVC formed under the Act of 1990 in an election dispute under the provisions of the Act of 1951.

32. It is relevant to note that judgment in ***Shobha Hymavathidevi*** (supra) is not brought to the notice of the co-ordinate Bench of this Court in ***H.P. Rajesh*** (supra). Likewise, the scope of Sections 80 and 80A of

the Act of 1951 and the implication of the Act of 1990 on the scope of Sections 80 and 80A of the Act of 1951 were not considered in **H. P. Rajesh** (supra).

33. Even otherwise, if an order is passed by DCVC in connection with the caste certificate issued to contest the election, any finding on the validity of the said caste certificate does not bind the High Court deciding an election petition under Section 80 and 80A of the Act of 1951, in view of the ratio in the case of **Shobha Hymavathidevi** (supra).

34. As already noticed, the State has no power to legislate contrary to matters listed in List-I to the Seventh Schedule of the Constitution of India. In fact, the State has not enacted any law or provision overstepping its legislative competence to curtail the scope of Sections 80 and 80A of the Act of 1951. This being the position there is no scope to raise a contention that in view of the Act of 1990, the High Court cannot decide the issue concerning the returned candidate's caste.

35. It is true that the caste of a person cannot be different for different purposes. If a certificate is issued certifying a person to be caste 'X', for one purpose, his caste will be and should be 'X' for all other purposes as well. One cannot claim that his caste is 'X' for one purpose and 'Y' for another. However, said logic does not give primacy to the decisions of DCVC in derogation of the jurisdiction conferred on the High Court under the Act of 1951. The DCVC is a creature of a statute with a statutorily defined role. Its exclusive jurisdiction is confined to the caste certificates covered under the Act of 1990 and not beyond and certainly the jurisdiction conferred on it will not eclipse the jurisdiction of the High Court conferred under the Act of 1951. Thus, viewed from any angle it is not possible to hold that provisions of the Act of 1990, take away the jurisdiction of the High Court acting under the Act of 1951 to decide the dispute concerning the returned candidate's caste.

36. On ***res judicata***. The respondent has also raised a contention that the petition is barred by *res-*

*judicata*. The respondent contends that in earlier election petition No.6 of 2018, the present respondent was arrayed as second respondent and one S.V. Ramachandra the returned candidate in the election of 2018 was arrayed as first respondent. In the said petition the Court has accepted the plea that "Nayaka" caste falls under Scheduled Tribe. This Court has already concluded that DCVC has no jurisdiction to decide on the caste of the returned candidate in an election to the Legislative Assembly and jurisdiction exclusively lies with the High Court. And this Court has also concluded that judgment in **H.P. Rajesh** (supra) is rendered without noticing the binding precedent and the relevant provisions in Act of 1951. Moreover, in **H.P. Rajesh** (supra) the application to dismiss the petition is filed by first respondent Sri.Ramachandra on the premise that his caste certificate is upheld by DCVC. In the said order, there is no reference to the caste certificate issued in favour of second respondent in the said petition who is the respondent in this petition. Hence, the said judgment cannot operate as *res judicata*.

37. Since the learned Senior Counsel for the respondent emphasized the judgment in **Narsing Rao** (supra), the same needs to be discussed. In the said case, in an election petition filed challenging the election of a returned candidate from a parliamentary constituency reserved for Scheduled Caste, the Bombay High Court considering the law laid down by Apex Court in **Kumari Madhuri Patil** (supra) held that the specialized forum created under the Act gets the jurisdiction to decide on the validity of the caste to the returned candidate. Consequently in **Narsing Rao** (supra), the Bombay High Court has dismissed the election petition for want of jurisdiction to decide the question relating to the validity of the caste certificate. In **Narsing Rao** (supra), the implications of the entries in the Union List and State list on the law relating to the election to Legislative Assembly under the Act of 1951, are not brought to the notice of the Court. More importantly, binding precedent in **Shobha Hymavathidevi** (supra) is not noticed in **Narsing Rao**.

38. In the cases referred to above, namely, in the cases of ***Kumari Madhuri Patil, Dayaram, Ayaubkhan, and Bharati Reddy*** (supra), the Court had no occasion to deal with the provisions of Section 80 and 80A of the Act of 1951. The Court had no occasion to deal with the legislative competence of the State to frame law affecting the jurisdiction of the High Court conferred under Sections 80 and 80A of the Act of 1951.

39. In the case of ***Dayaram*** (supra) the three Judges Bench of the Hon'ble Apex Court has held that the directions issued in the case of ***Kumari Madhuri Patil*** (supra) were in the nature of stop gap arrangement in the absence of effective legislation/mechanism for issuing and verifying the caste certificate. It is relevant to note that in the State of Karnataka, the Act of 1990 was in place by the time the judgment was rendered in ***Kumari Madhuri Patil's*** case(supra).

40. Accordingly, the question framed above is answered holding that the *Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes*



*(Reservation of Appointments, etc.) Act, 1990*, does not take away the jurisdiction of the High Court, to decide an election dispute questioning the caste of a returned candidate to the Legislative Assembly.

41. For the aforementioned reasons, I.A.No.2/2024 is rejected.

**Sd/-**  
**(ANANT RAMANATH HEGDE)**  
**JUDGE**

GAB/RKM/AM/CHS  
CT:ANB  
Sl.No.1 List No.1