





votes, has been declared as elected candidate from Ward No.141. Though in the Election Petition several issues were framed, the learned advocates appearing for the parties requested to decide modified issue no.6 only. In paragraph 32 of the impugned judgment, the learned Judge has recorded as follows.

"In view of modification of earlier issue no.6 and as there is evidence led by petitioner only on modified issue no.6 only, and as contended by the learned advocate for all the parties, only modified issue no.6 is considered for the purpose of deciding the present election petition and all other earlier issues framed in this petition are treated as not pressed and not argued."

The modified issue no.6 reads thus:

"Whether the election of Ward No.141 is liable to be set aside in the light of Caste Scrutiny Committee report in respect of respondent no.3/Smt Shantidevi K.Yadav dated 30.5.2003, as per law and fact?"

4. It appears that the caste certificate of the petitioner was referred to the Caste Scrutiny Committee,



to test its validity, which after holding an enquiry, held that the caste certificate produced by the petitioner was bogus and cancelled the same by its order dated 21.11.2003. The order of the Caste Scrutiny Committee was challenged by the petitioner in Writ Petition No.9231 of 2003. In the said writ petition, while issuing notice on 19.12.2003 the following order was passed:

- "1. Notice to the respondents on 12th January, 2004. Mr. More appears and waives service of notice on behalf of respondent no.6. Mr Walawalkar waives service of notice on behalf of respondent no.2. Mr Mendadkar waives service of notice on behalf of respondent no.9. Mr. Dubeey waives service of notice of respondent no.10. Any action will be subject to final outcome as well as further orders in the petition.
2. Notice to State that the matter shall be heard and finally disposed of at the stage of admission.
3. In addition to Court's notice, the petitioner to serve the respondents by



Advocate's notice, either personally or through courier/ speed post/E-mail/Fax and file an affidavit of service before the returnable date, failing which the matter shall stand dismissed as against the unserved respondents without further reference to the Court."

On 5.7.2004, Rule was issued and in view of the order, dated 19.12.2003, the interim relief was refused. The petitioner carried the matter further against the order of refusal to grant interim relief in the writ petition, in S.L.P, in which, the Apex Court passed the following order.

"Issue notice returnable within a period of three weeks.

Dasti service, in addition, is permitted.

Interim stay of any criminal prosecution pursuant to the order passed by the Scrutiny Committee. Petitioner shall not hold the office of the member of the municipal council."

5. In view of this, Mr Thorat, learned counsel for the petitioner, prayed for stay to the operative part of the order by which respondent no.4 has been declared



elected from Ward No.141. He submitted that the Addl.Chief Judge of the Small Causes Court has committed manifest error of law by declaring respondent no.4 elected under sub-section (2) of section 33 of the Mumbai Municipal Corporation Act, 1888 (for short, "MMC Act") ignoring the provisions of sub-section (4) of section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, "Act of 2000"). In other words, according to Mr Thorat, once the Caste Scrutiny Committee invalidates the caste certificate of an elected councillor, the election of such councillor is deemed to have been terminated retrospectively and, therefore, the Small Causes Court, who is seized of the Election Petition, ceases to have jurisdiction to hear the said petition and declare the candidate who secured next highest votes in the very election as elected. The Election Petition becomes infructuous. Further, he invited my attention to the issues framed by the Small Causes Court and in particular to issue no.7 as to "Whether the respondent no.4 is entitled for declaration as she is elected from Ward No.141?" and contended that since in the Election



Petition the parties did not press this issue, the learned Judge ought not to have declared respondent no.4 elected. He lastly submitted that the learned Judge failed to conduct an enquiry and decide the objections against respondent no.4 as contemplated under sub-section (2) of Section 33 of the MMC Act since declaration of election of the candidate who secured next highest votes is not automatic under that provision.

6. On the other hand, Mr Vashi and Mr Walawalkar, learned counsel for the respondents invited my attention to the Election Petition and in particular to ground (f) and prayer clause (c) therein, written statement and the cross examination of respondent No.1 i.e. petitioner in the Election Petition and contended that the grounds of objections raised against the declaration of respondent no.4's election were never raised before the Election Tribunal. My attention was also drawn to section 18 of the MMC Act which deals with the question as to disqualification to be determined by the Chief Judge of the Small causes Court. Mr. Walawalkar, placed reliance upon the judgment of this Court in Mrs Geeta Kisan Gore Vs. State of Maharashtra & Ors (W.P. No.3393/2003) decided on 15.7.2003.

7. I perused the impugned judgment and other material



placed on record by the parties and the relevant provisions of the MMC Act and the Act of 2000. Let me make it clear that I am dealing with the submissions of Mr Thorat only for the purposes of considering the interim relief prayed for by him. At the very outset, to my specific query made to Mr Throat as to whether the petitioner raised an objection in respect of the caste of respondent no.4 before the Small Causes Court or prayed for holding an enquiry in respect of her caste or to decide the objections, if any, raised by him in respect thereof. His reply was in negative. Moreover, it is clear from the impugned judgment that issue no.7 as to "whether respondent no.4 is entitled for declaration as she is elected from Ward No.141," was also not pressed by the petitioner. The petitioner could have pressed the said issue and led evidence in support of his contention which he urged in the present writ petition challenging the caste of respondent no.4. As a matter of fact, in paragraphs 23 and 32 of the judgment, it has been specifically recorded by the learned Judge and which has not been controverted by the petitioner that the parties restricted their case to the modified issue no.6 only.

7.1 The submission of Mr.Thorat that the learned Judge was wrong in deciding issue no.7 is devoid of any



merit. The declaration of Respondent No.4's election was not an answer to issue no.7 but it was by operation of law. Sub-section (2) of Section 33 empowers the court to do so in the absence of any objection for declaring the candidate who secured next highest votes in the election. Against this backdrop it would not be possible for me to accept the submission of Mr Thorat that the learned judge ought not to have declared respondent no.4 as elected from Ward No.141. As recorded earlier, neither petitioner or by any other candidates raised an objection regarding the caste of respondent no.4 either at the time of scrutiny of nominations or in the Election Petition. My attention was also invited to cross-examination of respondent no.1. Respondent no.1 in the cross-examination stated that "now he wants that new election should be held and that the caste certificate of respondent no.4 is also false one." However, he further stated that he did not have any proof to show that the caste certificate of respondent no.4 was false. Except the bare suggestion in the cross-examination of respondent no.1, the petitioner did not bring any other material in support of his so-called challenge to the caste of respondent No.4.

8. This takes me to consider the contention that once



the Caste Scrutiny Committee invalidates the caste certificate of an elected councillor, the election of such councillor is deemed to have been terminated retrospectively and, therefore, the Small Causes Court, who is seized of the Election Petition, ceases to have jurisdiction to hear the said petition and declare the candidate who secured next highest votes in the very election as elected. The Election Petition becomes infructuous. Sub-section (4) of section 10 of the Act of 2000 on which heavy reliance was placed reads thus:

"(4) 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 as belonging to such caste, Tribe or Class



on such false 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.

8.1. To appreciate the question raised by the petitioner, it would be advantageous to see the scheme of the Act of 2000 which provides for the regulation of the issuance and verification of the caste certificates to the persons belonging to the Schedule Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto. Section 3 thereof provides that any person belonging to the reserved categories referred to therein can apply for issuance of caste certificate requiring him to produce a caste certificate in order to claim benefit of any reservation provided to such castes Tribes or Classes, either in any public employment or for admission into any educational institution, or for the purpose of contesting for elective post in any local authority or in the co-operative societies etc. Section 4 empowers the competent authority to whom the



application is made under section 3, after satisfying itself about genuineness of the claim and following the procedure as prescribed, issue a caste certificate within the time limit. The competent authority is defined in clause (b) of section 2. The caste certificate issued by the competent authority shall be valid only subject to verification and grant of validity certificate issued by the scrutiny committee. The scrutiny committee is defined in clause (k) of section 2 which means the committee or committees constituted under sub-section (1) of section 6 for the Scheduled Castes, Scheduled tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes Category for verification of the Caste certificate and to perform the function of Scrutiny Committee under the Act of 2000. Section 6 provides constitution of the scrutiny committee and the procedure for applying for validation of the caste certificate and the procedure to be followed by the scrutiny committee. Section 7 provides confiscation and cancellation of false caste certificate which empowers the scrutiny committee, suo motu or otherwise call for the record and confiscate the certificate by following such procedure as prescribed after giving the person concerned an opportunity of being heard. The order passed by the scrutiny committee



shall be final and shall not be challenged before any authority or the Court except the High Court under Article 226 of the Constitution of India. Section 10 of the Act of 2000 speaks about the withdrawal of the benefits secured on the basis of false caste certificate. Sub-section (4) of section 10 provides 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 reserved categories referred to therein by procuring false caste certificate as belonging to such category being cancelled by the scrutiny committee and any benefit 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. Neither this provision nor any other provision in the Act of 2000 empowers the caste scrutiny committee to declare such person disqualified of being a member of any statutory body if he has contested the election on the seat reserved for such category. Sub-section (4) provides disqualification for being a councillor and his election shall be deemed to have been terminated retrospectively. Disqualification is, thus, by



operation of law. Where a disqualification for being councillor is under section 10 of the Act of 2000 and, if election petition questioning the election is not pending, for filling up the vacancy, the mandate of section 9 has to be followed. Section 9 of the MMC Act lays down the procedure for filling up casual vacancy.

9. The Division Bench of this Court in Writ Petition No.3393 of 2003 (Mrs Geeta Kisan Gore Vs. State of Maharashtra and ors) decided on 15.7.2003 was dealing with almost identical situation and the submissions that the Small Causes Court committed an error of law and of jurisdiction in relying upon sub-section (2) of section 33 of the MMC Act and declaring respondent no.4 therein elected. After considering the provisions of sections 9 and 33 of the MMC Act, this Court in paragraph 9 held thus:

"9. In the event of contingency as contemplated by Section 9, the authorities are required to take action treating vacancies as "Casual Vacancies". It is, no doubt, true that once the eventualities and consequences relates to disqualification of the councillor and it has to be dealt with by issuing a notification for holding an



election treating it as casual vacancy provided the proceedings under section 33 have not been initiated by filing an election petition. Hence, where a returned candidate has been declared disqualified and no election petition is pending in which an order can be passed under sub section (2) of section 33, the procedure laid down under Section 9 of the Act has to be followed. But where the returned candidate is declared disqualified under Section 9 of the Act and an election petition is pending, the 'Judge' is enjoined to declare the candidate who has obtained next highest number of valid votes as elected under sub-section (2) of section 33 of the Act."

In my opinion, the same analogy would apply that where the returned candidate has been declared disqualified under sub-section (4) of section 10 and the Election Petition is pending, the Judge is enjoined to declare the candidate who has obtained next highest number of valid votes as elected under sub-section (2) of section 33 of the MMC Act. Sub-section 2 of section 33 is



explicitly clear and unequivocal. It states that if the Chief Judge finds that the councillor is held disqualified and his election is declared null and void, the Chief Judge can direct that the candidate in whose favour the next highest number of valid votes is recorded, shall be deemed to have been elected. It is against this backdrop, I have no hesitation in holding that the Small Causes Court has rightly declared respondent no.4 as elected from Ward No.141. The submission of Mr Thorat that the order declaring respondent no.4 as elected from the said Ward is without jurisdiction, therefore, must be rejected.

10 In view of this, the operative part of the order by which respondent no.4 is declared as elected candidate from Ward No.141, can not be stayed pending hearing and final disposal of this petition.

11. Let me make it clear that since the issue regarding the validity of the caste certificate is subject matter of Writ Petition No.9231 of 2003 which is pending for final disposal, I am satisfied that the following order will meet the ends of justice.

(i) The election of respondent no.4 as declared by the impugned order shall be subject to final outcome of the instant writ petition. Respondent no.4 shall not be entitled to exercise her right of vote in the House and



draw the allowances. Respondent no.4 is other wise entitled to perform all the functions as elected councillor of the Mumbai Municipal Corporation of the concerned Ward.

(ii) Liberty to apply for modification of the interim order either after disposal of Writ Petition No. 9231 of 2003 or modification of the interim order passed therein.

. Parties to act on an authenticated copy of this order which may be made available to them.

(D.B.BHOSALE, J.)

wp9159-04