

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Writ Appeal No : 339 of 2015

Seema 'Amratlal'

Vs.

Smt. Kanchan Khattar

**Present : Hon'ble Shri Justice Rajendra Menon.
Hon'ble Shri Justice Sushil Kumar Gupta.**

Shri A.M. Trivedi, Senior Advocate, with Shri Ashish Trivedi,
counsel for the appellant.

Shri Mohammed Ali, counsel for the respondent.

Whether approved for reporting: Yes / No.

**JUDGMENT
31/07/2015**

In this appeal filed under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, exception is sought to an order-dated 27.3.2015 passed by the learned writ Court in Writ Petition No. 704/2015.

2- Facts in brief, which are necessary for adjudication of the present dispute, goes to show that election to the post of Chairperson of Municipal Council, Umaria was held on 16.1.2013. Smt. Kanchan Khattar, respondent herein, contested the said election as a candidate belonging to reserved category, namely 'OBC'. She claimed that she

belongs to the Caste – 'Sindhi Khatri', which is a backward caste in the State of Madhya Pradesh. She was declared elected by a margin of 978 votes, defeating her nearest rival – the appellant herein Smt. Seema 'Amratlal'. After the results were notified, the appellant herein filed an election petition in accordance to the provisions of the MP Municipalities Act, 1961 (hereinafter referred to as 'Act of 1961'); and, in the said election petition various grounds as are specified in section 22 of the Act of 1961, were indicated to say that the election of the respondent be declared as illegal.

3- One of the grounds canvassed was with regard to improper acceptance of the nomination of the respondent by the returning officer.

4- Based on the pleadings of the parties and the material that came on record, the Election Tribunal formulated various issues and two of the issues framed were as to whether the respondent is qualified to contest the election for the post of Chairperson of the Municipal Council. Issues No.1 (2); and No.2, reads as under:

“1. (1) xxx xxx xxx

(2) अ क्या नगर पालिका परिषद उमरिया के अध्यक्ष पद हेतु दिनांक 16.01.2013 को सं. पन्न हुए चुनाव दिनांक 2.1.2013 को नाम निर्देशन पत्र हेतु प्रस्तुत किये जाने वाले पत्र/प्ररूप-3 में की घो'रणा दि दृ 2.1.13 में अनावेदिका ने अपनी जाति का उल्लेख न करते हुए अपनी जाति को छुपाया ?

ब क्या अनावेदिका ने उक्त नाम निर्देशन पत्र प्ररूप-3 के कालम ड में मध्यप्रदेश राज्य के जिला में जिला उमरिया न लिखते हुए, केवल मध्यप्रदेश लिखकर उमरिया जिले में उसकी जाति अन्य पिछड़ा वर्ग में नहीं आती है, इस तथ्य को छुपाया ?

2. क्या अनावेदिका ने नाम निर्देशन पत्र प्ररूप-3 के साथ उसके उमरिया जिले हेतु अन्य पिछड़ा वर्ग में आने वाली उसकी जाति का कोई सक्षम प्राधिकारी द्वारा जारी जाति प्रमाण-पत्र प्रस्तुत नहीं किया ? यदि हां, तो प्रभाव ?

(Emphasis supplied)

5- Alongwith the respondent, the election in question was also challenged by another person namely one Shri Rakesh Dardvanshi, and after filing the election petition he also filed a complaint before a High Power Committee constituted in accordance to the law laid down by the Supreme Court in the case of **Ku. Madhuri Patil Vs. Additional Commissioner** [(1994) 6 SCC 241], to say that the respondent herein – Smt. Kanchan Khattar does not belong to the OBC category and, therefore, her social status by declared as a person not belonging to the OBC category.

6- Be it as it may be, on account of the fact that an inquiry with regard to the social status of the respondent was pending before the High Power Committee, by virtue of the complaint made by Shri Rakesh Dardvanshi and further by contending that in view of the law laid down in the case of

Ku. Madhuri Patil (supra), the social status of a person cannot be determined by an Election Tribunal, an objection was filed. The Tribunal initially on 5.4.2014 rejected the same and indicated that based on the issues framed the matter can be proceeded with. Thereafter, when another objection on the same line was filed, the same was also dismissed on a subsequent date and, therefore, both these orders-dated 5.4.2014 and the subsequent one was challenged in the writ petition. The learned writ Court examined the matter in the light of the law laid down in the case of **Ku. Madhuri Patil** (supra) and after taking note of an order passed by learned Single Bench of this Court in **W.P. No. 17188/2011 [Smt. Janaki Devi Maravi Vs. Smt. Siya Bai and others]** came to the conclusion that the social status of a person and tenability of a caste certificate cannot be adjudicated in the election proceedings, it can only be done by the High Power Committee constituted in accordance to the law laid down in the case of **Ku. Madhuri Patil** (supra) and when such a contention was raised, the learned writ Court having directed for keeping the proceedings in the Election Tribunal in abeyance, till the question of social status is not decided by the High Power Committee, the writ Court dismissed the writ petition and, therefore, this appeal.

7- Shri A.M. Trivedi, learned Senior Advocate, took us through the complaint filed before the High Power Committee by Shri Rakesh Dardvanshi and argued that the complaint filed by him was under section 41-A of the Act of 1961, pertaining to removal of a President or Vice President or Chairman of a Committee after elections are held and as the Election Petition is pending, which pertains to challenge to

the process of election itself, it is argued that the pendency of the said matter before the High Power Committee should not come in the way of proceeding with the election dispute. In support of the aforesaid contention to say as to what is the scope of jurisdiction of an Election Tribunal and whether an Election Tribunal can interfere in the matter on account of the provisions of section 41-A, learned Senior Advocate placed reliance on a judgment in the case of **Sitabai Kataria Vs. State of MP and others** (2001 (3) MPHT 156); and, another judgment by a Division Bench of this Court in the case of **Smt. Sharda Devi Vs. Smt. Noorjahan** (2007 (5) MPHT 75 (DB). Learned Senior Advocate places reliance on the judgment in the case of **Ku. Madhuri Patil** (supra); the interpretation of the said judgment and its scope as explained by the Supreme Court subsequently in the case of **Dayaram Vs. Sudhir Batham** [(2012) 1 SCC 333]; and, another judgment of the Supreme Court in the case of **Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and others** (AIR 2006 SC 543), and argued that the judgment rendered by the Election Tribunal is a judgment in rem; and, the relationship and status of a person can be decided by an Election Tribunal.

8- Placing heavy reliance on these judgments, learned Senior Advocate argues that the learned Single Judge committed an error in staying the proceedings. That apart, learned Senior Advocate argues that if Issue Nos. 1 and 2, framed by the Election Tribunal are analyzed, it would be seen that it is not a case where the respondent contested the election by producing a caste certificate showing that she is a person belonging to the OBC category or that it is the case of

the appellant that the said caste certificate is a forged or fabricated document. On the contrary, the issues framed, based on the specific case of the appellant, is as to whether the nomination of the respondent could be accepted as it did not meet the requirement of the Statutory Proforma No.3 specified under the Act of 1961 and the rules framed thereunder in view of certain error in mentioning the caste and name and as the nomination itself was not maintainable when the caste certificate was not attached with the nomination papers, which is a requirement of law.

9- It is argued that these issues were not the issues which could be contested or determined by the High Power Committee and, therefore, by totally misconstruing the question involved in the matter, the learned writ Court has interfered. Learned Senior Advocate argues that in this case the question of determination of status of the appellant was not at all involved whereas on the basis of the issues framed, it was a case of incorrect acceptance of nomination and, therefore, on these counts it is tried to be canvassed that an error has been committed by the learned writ Court in interfering with a reasonable order passed by the learned Election Tribunal.

10- Shri Mohammed Ali, learned counsel for the respondent, raised a preliminary objection with regard to maintainability of this writ appeal. It was argued by him that the writ petition filed by the respondent before the learned Single Judge was a petition under Article 227 of the Constitution. Learned counsel refers to the cause title of the said writ petition, wherein the petition is shown to be filed

under Article 227 and by referring to the provisions of MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 (hereinafter referred to as 'Adhiniyam of 2005') and the proviso thereof, it is argued that a writ appeal is only maintainable if the High Court exercises its original writ jurisdiction under Article 226 and no appeal under section 2(1) of the Adhiniyam of 2005 would lie against an final order or against an order passed by the learned Single Bench in exercise of its original jurisdiction under Article 226. Accordingly, learned counsel argues that as the power exercised by the learned writ Court and the petition filed before the writ Court was under Article 227 of the Constitution, this appeal is not maintainable. Learned counsel refers to the judgment of the Supreme Court in the case of **Surya Devi Rai Vs. Ram Chander Rai and others** [(2003) 6 SCC 675]; and, a subsequent judgment of the Supreme Court in the case of **Radheshyam and another Vs. Chhabi Nath and others** [(2015) 5 SCC 423], and argues that now when the Supreme Court in the case of **Radheshyam** (supra) has over-ruled the law laid down in the case of **Surya Devi Rai** (supra), which held that a writ of certiorari can be issued under Article 226 of the Constitution is no more a 'good' law, the writ appeal is not maintainable.

11- On merits, learned counsel for the respondent argued that once the Supreme Court in the case of **Ku. Madhuri Patil** (supra) has given the exclusive power to decide the question pertaining to social status of a person or the validity or otherwise of a caste certificate to an Expert High Power Committee and when no other authority is empowered to

interfere into the matter, the learned writ Court has not committed any error in passing the impugned order as the Election Tribunal has no jurisdiction or authority to determine the social status of the respondent or to go into the question of the legality or otherwise of the caste certificate issued to her. Accordingly, Shri Mohammed Ali – learned counsel for the respondent, submitted that the appeal is liable to be dismissed.

12- With regard to the preliminary objection raised by Shri Mohammed Ali, Shri A.M. Trivedi – learned Senior Advocate, invited our attention to a judgment of the Supreme Court in the case of **MMTC Limited Vs. Commissioner of Commercial Tax and others** [(2009) 1 SCC 8]; a Full Bench judgment of this Court in the case of this Court in the case of **Jaidev Siddha (Dr) and others Vs. Jaiprakash Siddha and others** [2007 (3) MPLJ 595], and the principle laid down in the case of **Radheshyam** (supra) itself to say that in this case the order impugned is not passed by the Civil Court, it is passed by an Election Tribunal and, therefore, a writ could be issued under Article 226 to such a Tribunal and the over-ruling of the judgment rendered in the case of **Surya Devi Rai** (supra) to the extent of non-availability of jurisdiction to issue a writ of certiorari under Article 226 of the Constitution to a Civil Court will not apply in the present case. Accordingly, learned Senior Advocate argued that the preliminary objection raised by Shri Mohammed Ali is not tenable.

13- We have heard learned counsel for the parties at length and have perused the records.

The first question that we are required to address is with regard to preliminary objection raised by Shri Mohd. Ali, learned counsel for respondent regarding maintainability of this appeal under the Adhiniyam of 2005.

14- Even though in the writ petition bearing W.P.No.7004/2015 filed by the respondent she has indicated the same to be a petition under Article 227 of the Constitution of India, but consistently it has been held not only by the Full Bench of this Court in the case of, but also in the case of **Jaidev Siddha** (supra), but also in the case of Supreme Court including the case of **M.M.T.C. Limited** (supra) that mere mentioning in the body of the petition that it is a petition under Article 226 or 227 of the Constitution is not the sole determining factor to say as to whether the petition was filed under Article 226 of the Constitution or under Article 227 of the Constitution. It has been held in these cases that when such a controversy arises it is not the cause title or the nomenclature or the description given as Article 227 or 226 of the Constitution of India that is to be given predominant importance, the prayer made, the nature of power exercised by the High Court, the tenure of the order and the direction issued becomes the determining factor in finding out what was the power exercised by the High Court and therefore merely because in the description of the writ petition filed before the writ Court, the term used is "a petition under Article 227 of the Constitution of India" we are not inclined to hold it so, instead we will examine it in the light of various principle as detailed by the Supreme Court in the case of **M.M.T.C. Limited** (supra) and the Full Bench in

the case of **Jaidev Siddha** (supra).

15- As far as back in the year 1955 the Hon'ble Supreme Court in the case of **Hari Vishnu Kamath Vs. Ahmad Ishaque and others** (AIR 1955 SC 233) has held that the High Court while issuing the writ of certiorari under Article 226 of the Constitution can only annul or set aside the decision of the Tribunal, but while exercising its supervisory jurisdiction under Article 227 of the Constitution, the High Court is empowered to give further direction to subordinate Court or the Tribunal. Thereafter the same question was again considered in the case of **Umaji Keshao Meshram and others Vs. Smt.Radhikabai and another** (AIR 1986 SC 1272). It has been held that in a petition which came in the High Court under Article 227 of the Constitution, it is the orders or judgments of the subordinate Court or the Tribunal and the High Court is required to see as to whether the Court or the Tribunal has acted within its authority and according to the law. In the case of **Sushilabai Laxminarayan Mudaliyar and others Vs. Nihalchand Waghajibhai Shaha and others** (AIR 1993 Suppl. (1) SCC 11) and in the case of **Ratnagiri Distt. Central Cooperative Bank Ltd. Vs. Dinkar Kashinath Watve** [(1993) Supp (1) SCC 9] the principle has been laid down in the following manner :-

"1..... 'Even when in the cause-title of an application both Article 226 and Article 227 of the Constitution have been mentioned, the learned Single Judge is at liberty to decide, according to facts of each particular case, whether the said application ought to be dealt with only under Article 226 of the Constitution. For determining the question of maintainability of an appeal against such a judgment of the Single Judge the Division Bench has to find out whether in substance the judgment has been passed by the

learned Single Judge in exercise of the jurisdiction under Article 226 of the Constitution. In the event in passing his judgment on an application which had mentioned in its cause-title both Articles 226 and 227, the Single Judge has in fact invoked only his supervisory powers under Article 227, the appeal under Clause 15 would not lie. Clause 15 of the Letters Patent expressly bars appeals against orders of Single Judges passed under revisional or supervisory powers. Even when the learned Single Judge's order has been passed under both the articles, for deciding the maintainability against such an order what would be relevant is the principal or main relief granted by the judgment passed by learned Single Judge and not the ancillary directions given by him. The expression 'ancillary' means, in the context, incidental or consequential to the main part of the order.

Thus, the determining factor is the real nature of principal order passed by the Single Judge which is appealed against and neither the mentioning in the cause-title of the application of both the articles nor the granting of ancillary orders thereupon made by learned Single Judge would be relevant. Thus, in each case, the Division Bench may consider the substance of the judgment under appeal to ascertain whether Single Judge has mainly or principally exercised in the matter his jurisdiction under Article 226 or under Article 227. In the event in his judgment the learned Single Judge himself had mentioned the particular article of the Constitution under which he was passing his judgment, in an appeal under Clause 15 against such a judgment it may not be necessary for the Appellate Bench to elaborately examine the question of its maintainability. When without mentioning the particular article the learned Single Judge decided on merits the application, in order to decide the question of maintainability of an appeal, against such a judgment, the Division Bench might examine the relief granted by the learned Single Judge. When more than one relief are granted by the learned Single Judge, for maintainability of an appeal, the determination would be the main and not the ancillary relief. When a combined application under Articles 226 and 227 of the Constitution is summarily dismissed without reasons, the appeal court may consider whether the facts alleged, warranted filing of the application under Article 226 or under Article 227 of the Constitution."

16- Again in the case of **Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad** [(1999) 6 SCC 275] it has been held that if on examining the tenure of the order the other pleadings and other material the Court comes to the conclusion that the High Court has exercised powers under Article 227 of the Constitution of India, then the Letters Patent was maintainable.

17- All these judgments were considered by the Full Bench of this Court in the case of **Jaidev Siddha** (supra) and the same principle has been reiterated after considering all these cases. If the principle laid down in the aforesaid cases are analyzed we would find that while deciding the matter in the final order, if the Court gives ancillary directions, which may pertain to Article 227, the Letters Patent is not available. However if it is found that the Court has exercised writ of certiorari under Article 226 of the Constitution, Letters Patent or Writ Appeal would be maintainable.

18- If we analyze the present case in the backdrop of the aforesaid legal principle, we find that before the Election Tribunal, the application filed was that in view of the law laid down in the case of **Madhuri Patil** (supra) the proceeding in the Election Tribunal should be stayed as the Tribunal does not have any jurisdiction to deal with the matter. The learned Election Tribunal took note of the issues framed, the application filed under section 41-A of the Act of 1961 by Rajesh Dardvanshi before the High Power Committee and came to the conclusion that looking to the issues framed and the dispute pending before the Tribunal the proceedings

need not be stayed.

19- However the learned writ Court did not evaluate all the facts, did not exercise its power of supervisory jurisdiction, but took note of the judgment of **Madhuri Patil** (supra) and judgment of the Single Bench in the W.P.No.17188/2011 **(Smt.Janaki Devi Maravi Vs. Smt.Siya Bai and others)** held that for deciding social status of a person and evaluation as to the caste certificate filed or the certificate was forged or not power is vested with the High Power Committee, therefore, the proceedings before the Election Tribunal should be stayed. It is therefore clear from the tenure and the nature of the order passed that the writ Court did not exercise any supervisory power under Article 227 of the Constitution, instead issued a writ for keeping the proceedings in abeyance only because the matter was pending before the High Power Committee. It is the case where after going through the order we do not find that the writ Court exercised jurisdiction under Article 227 of the Constitution, instead if the principle applicable in the case of **M.M.T.C.Limited** (supra) and **Jaidev Siddha** (supra) are applied, we are of the opinion that the power exercised by the Court was under Article 226 and not under Article 227 of Constitution and therefore we see no substance in the preliminary objection raised by Shri Mohd. Ali, learned counsel for respondent. That apart in the judgment delivered in the case of **Radhey Shyam** over ruling the case of **Surya Dev Rai**, will not have any assistance and will not apply in the present case, wherein this is not a case where certiorari has been issued to a subordinate civil Court and therefore that judgment is also not applicable. Keeping in view of

aforesaid, we have no hesitation in rejecting the preliminary objection raised by Shri Mohd. Ali, learned counsel for respondent.

20- As far as the merit of the matter is concerned, if the judgment referred by the Supreme Court in the case of **Madhuri Patil** (supra) is evaluated, we find that in case of **Madhuri Patil** (supra) Hon'ble Supreme Court streamlined the proceedings for issuing caste certificates and issuing social status and the procedure to be followed for its scrutiny and approval and in the process by issuing 15 directions in para 13 a detailed procedure was laid down as to how and in what manner the social status of a person is to be determined and what is to be done if the caste certificate issued is challenged. However for deciding the present petition direction no.11, 12 and 13 are only relevant and we reproduce the same :-

“(11) The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

(12) No suit or other proceedings before any other authority should lie.

(13) The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/ matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.”

21- The direction no.11 contemplates that an order passed by the High Power Committee shall be final and conclusive subject to its interference in the proceedings under Article

226 of the Constitution. The direction no.12 contemplates that no suit or other proceedings before any other authority shall lie. It is based on these directions contained in direction no.12 which pertains to jurisdiction of civil court that the court have held that the Election Tribunal has no authority to go into these questions.

22- In the case of **Dayaram** (supra) direction no.11 in the case of **Madhuri Patil** (supra) has been analyzed and it has been held that a scrutiny committee is the creation of the judgment in the case of **Madhuri Patil** (supra), it is in the nature of the statutory committee and its proceedings can be challenged only under Article 226 of the Constitution. However it clearly says that the Civil Court does not have jurisdiction to deal with the matter which is covered within the jurisdiction of the scrutiny committee.

23- We are of the considered view that in the present case, we need not go into all these questions and infact we are of the considered view that the writ Court was misdirected in going into the question whether the Election Tribunal has jurisdiction to decide the question of issuing caste certificate or social status. If the issues framed by the Election Tribunal are analyzed, it is clear that it is the case of the appellant before the Election Tribunal that the nomination paper of respondent is not in accordance with the requirement of statutory rule particularly Form No.3. It is her specific case that in a particular Form in the declaration column the caste of the respondent is not mentioned and as required under the statutory form, she has not submitted the caste certificate, nor is the place "Umaria" mentioned. It is because

of these facts that the issues as indicated hereinabove has been framed and after considering this, on account of the alleged improper acceptance of the nomination paper and the issues framed the Tribunal refused to stay the proceedings. We are of the view that the Election Tribunal has not committed any error and the writ Court was carried away by the question that social status cannot be decided by the Election Tribunal, but did not look into the specific issues framed as indicated hereinabove or the pleading or the dispute in its right prospective. If the election of the respondent is unsustainable on violation of non-compliance with the statutory requirement of submitting the election paper and nomination paper in a particular statutory form and if requirement of the statutory form has not been fully complied, the Election Tribunal can declare that due to improper acceptance of the nomination paper the election is vitiated and for the purpose of examining the issue of acceptance of nomination paper on the basis of issues framed, it is not necessary to go into the question of social status of respondent or validity of the caste certificate. That apart respondent has not at all filed any caste certificate, therefore, the question of validity of certificate is not the dispute before the Election Tribunal and accordingly, the prohibition indicated in the case of **Madhuri Patil** (supra) may itself not apply, therefore the learned writ Court should have left it for the Election Tribunal to decide in accordance with law on the basis of issues framed and if the Election Tribunal comes to the conclusion that the law laid down in the case of **Madhuri Patil** and **Dayaram** (supra) comes in the way of exercising jurisdiction. The Tribunal can stay the proceedings, but for the present when on the basis of issues

framed prohibition imposed by the law laid down in the case of **Madhuri Patil** (supra) does not apply, we are of the considered view that this appeal should be allowed.

24- Even otherwise, the proceedings pending before the Election Tribunal could not be stayed for the simple reason that the application filed by Shri Rakesh Dardvanshi before the High Power Committee was not an application in the ordinary sense seeking cancellation of the caste certificate. It was an application filed under section 41-A of the Act of 1961. Section 41-A pertains to removal of a President or Vice President or Chairman of a Committee after the elections are held. The jurisdiction to exercise power by the competent authority under section 41-A accrues only after the election is concluded and the candidate is notified to be elected and assumes charge. That being so, in the light of the judgment rendered in the case of **Sitabai Kataria** (supra) and **Smt. Sharda Devi** (supra), the proceeding under section 41-A was for removal of a duly elected Chairman or President and the proceeding pending before the Election Tribunal was something to do with the process of election, much prior to election of the incumbent candidate. That being so, on the basis of an election pending before the High Power Committee for removal of a duly elected Chairman or President under section 41-A, the proceedings in the Election Tribunal could not be stayed. On this count also, the order passed by the writ Court is unsustainable.

25- Accordingly, we allow this appeal. The order passed by the writ Court in W.P.No.704/2015 dated 27.3.2015 is quashed and we permit the election Tribunal to decide the

election petition in accordance with law. We may add that once we have decided the writ appeal based on the nature of dispute, it is not necessary for us to go into various other questions which have been indicated by us in the preceding paragraphs.

(Rajendra Menon)

J U D G E

(Sushil Kumar Gupta)

J U D G E

Aks/M