

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2018

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

ELECTION PETITION No.4/2013

BETWEEN:

SRI N MUNIANJAPPA
AGED ABOUT 57 YEARS,
S/O H. NARAYANAPPA,
WARD NO. 8, MUTYALAPETE,
MULBAGAL TOWN,
KOLAR DISTRICT-563 131

... PETITIONER

(BY SMT. PRAMILA NESARGI, Sr.COUNSEL FOR
SRI HEMANTH KUMAR D &
SRI MUNISWAMY GOWDA S.G., ADVs.)

AND:

1. G MANJUNATHA
AGED ABOUT 34 YEARS,
S/O LATE GOVINDU,
MARAHERUKOTHURU VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
2. G. VENKATARAVANA
AGED ABOUT 36 YEARS,
S/O LATE GOVINDU,
MARAHERUKOTHURU VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
3. AMARESH
AGED ABOUT 45 YEARS,
S/O MUNISWAMY @ SAKRAPPA,
KEELAGANI VILLAGE,
AVANI HOBLI, MULBAGAL TALUK,
KOLAR DISTRICT-563 131

4. M.N. AMBARISH
AGED ABOUT 34 YEARS,
S/O NARAYANAPPA
MALEKUPPA VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
5. Y. SRINIVASAN PATAPAT
AGED ABOUT 43 YEARS,
S/O A.V. YALLAPPA,
NO.32, BR AMBEDKAR ROAD,
ATTIBELE,
ANEKAL TALUK-562 125
6. P CHANDRAPPA
AGED ABOUT 45 YEARS,
S/O LATE PILLAPPA,
ASALI ATTHIKUNTE VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
7. JAGADISH C.K
AGED ABOUT 34 YEARS,
S/O KRISHNAMURTHY RAJ,
NO. 3264/5, MUTHYALPET,
MULBAGAL TOWN,
KOLAR DISTRICT-563 131
8. DODDACHOWDAPPA
AGED ABOUT 63 YEARS,
S/O MUNIVENKATAPPA,
NAGAVARA VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
9. C. RAMAKRISHNAIAH
AGED ABOUT 54 YEARS,
S/O LATE CHINNAPPA,
KURAGAL VILLAGE AND POST,
KOLAR TALUK,
KOLAR DISTRICT-563 131
10. RANJIT KUMAR T
AGED ABOUT 26 YEARS,
S/O M. THIMMAIAH,
NETHAJINAGARA
MULBAGAL TOWN,
KOLAR DISTRICT-563 131

11. H.A. LAKSHMAIAH
AGED ABOUT 69 YEARS,
S/O AVALAPPA,
NO.4081, 1ST CROSS
M.N. HALLI ROAD,
MULBAGAL TOWN,
KOLAR DISTRICT-563 131
12. V. ADINARAYANA
AGED ABOUT 35 YEARS,
S/O. VENKATARAMAPPA,
PEDDAREDDYPALLI VILLAGE,
BAGEPALLI TALUK
KOLAR DISTRICT-561 207
13. G. ALANGUR RAMANNA
AGED ABOUT 44 YEARS,
S/O GANESHAPPA,
SONNAVADI VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
14. CHALAPATHI
AGED ABOUT 40 YEARS,
S/O VENKATESHAPPA
NAGAMANGALA VILLAGE,
MULBAGAL TALUK
KOLAR DISTRICT-563 131
15. NAGARAJ V
AGED ABOUT 30 YEARS,
S/O VIDYARANYA,
MADDERI VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
16. T.V. BALAKRISHNA
AGED ABOUT 39 YEARS,
S/O VENKATANABOVI
TIMMANAYAKANAHALLI,
MALLANAYAKANAHALLI POST,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
17. V. MARAPPA
AGED ABOUT 40 YEARS,
S/O VENKATARASHAMBOVI
OLAGERANAHALLI VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131

18. D. VENKATARAVANAPPA
AGED ABOUT 34 YEARS,
S/O. DODDAKAMANNA
KESARAMANAGALA VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
19. T.M. SHVIANNA
AGED ABOUT 49 YEARS,
S/O MUNIYAPPA,
THORADI VILLAGE,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
20. N. SRINIVAS
AGED ABOUT 49 YEARS,
S/O NARAYANAPPA,
GUMMAKAL VILLAGE,
G.MARANDAHALLI POST,
MULBAGAL TALUK,
KOLAR DISTRICT-563 131
21. V. SRINIVAS
AGED ABOUT 39 YEARS,
S/O VENKATARAMAPPA
NETHAJI NAGAR,
MULBAGAL TOWN,
KOLAR DISTRICT-563 131

... RESPONDENTS

(BY SRI ASHOK HARANAHALLI, Sr. COUNSEL FOR
SRI K RAGHUPATHY &
SRI R HEMANTHRAJ A/W
SRI C SHASHIKANTHA, ADVs. FOR R1
SRI N.S. SHESHADRI, ADV. FOR R2
SRI A S MAHESH, ADV. FOR R3
SRI PRAVEEN BY RJS ADV's FOR R4, 6-11, 13-15 & 19
SRI V S BIJU, ADV. FOR R17
SRI G.KRISHNAMURTHY FOR
SRI BIMBADHAR M GOWDAR, ADV. FOR R12
V/O DATED 22/01/2018)

THIS ELECTION PETITION PRESENTED U/S 81 OF THE REPRESENTATION OF PEOPLE'S ACT, 1951 R/W RULE 4 OF THE ELECTION PROCEDURE RULES, KARNATAKA 1967 BY ONE SRI MUNIANJAPPA N, PETITIONER CHALLENGING THE ELECTION OF THE RESPONDENT NO.1: SRI G MANJUNATHA TO THE KARNATAKA LEGISLATURE FROM NO.145, MULBAGAL(SC) ASSEMBLY CONSTITUENCY, GENERAL ELECTIONS HELD IN

THE YEAR 2013, PRAYING TO A) DECLARE THAT ON THE DATE OF ELECTION ON 05.05.2013 AND DECLARATION OF THE RESULT ON 08.05.2013 THAT THE RESPONDENT NO.1 WAS NOT QUALIFIED TO BE CHOSEN TO FILL THE SEAT RESERVED FOR THE SCHEDULE CASTE 145 MULBAGAL UNDER THE CONSTITUTION AND UNDER SECTION 100(1)(A)(D)(IV) OF THE REPRESENTATION OF THE PEOPLE ACT AND ETC.

THIS ELECTION PETITION HAVING BEEN RESERVED FOR ORDERS ON 13.04.2018, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The petitioner in this petition filed under Section 81 of the Representation of People's Act, 1951 ('R.P.Act' for short) is before this Court seeking to declare that on the date of election on 05.05.2013 and on the date of declaration of the result on 08.05.2013, respondent No.1 was not qualified to be chosen to fill the seat reserved for the Scheduled Caste in the Karnataka Assembly. The seat in question is No.145 Mulbagal reserved constituency. The petitioner is also seeking to declare the result of the said election, so far as it concerns respondent No.1 is materially affected by the improper acceptance of the nomination. A declaration is sought that the result of the respondent No.1 as elected to the No.145 Mulbagal (SC) Assembly constituency as null and void. A declaration that the

result of the election is materially affected by the improper reception and counting of 73146 votes in favour of respondent No.1 as void and accordingly treat the said votes as wasted and thrown away votes is sought. Consequently it is further sought that the petitioner be declared as duly elected to the No.145 Mulbagal (SC) Assembly Constituency and to impose penalty on the respondents No.1 and 2 under Section 125A of the R.P.Act.

2. The petitioner and the respondents No.1 to 21 had filed the nomination seeking their election to the Karnataka Legislative Assembly from No.145 Mulbagal Constituency. The said constituency is reserved for persons belonging to Scheduled Caste. The respondents No.1 and 2 as also their uncle one Sri Gangireddy had filed their nominations. The nominations filed by the respondents No.1 and 2 were accepted by the Returning Officer on 18.04.2013. In the result of the election declared on 08.05.2013 the petitioner had secured 39142 votes while respondent No.1 had secured 73146 votes and accordingly respondent No.1 was declared

elected. At that stage, since the writ petition was pending assailing the acceptance of the nomination, the result declared was made subject to result of W.P.No.20025-26/2013, which has been disposed of leaving open all contentions to be considered in this petition.

3. The petitioner is challenging the acceptance of the nomination and the election of respondent No.1 by contending that the respondent No.1 does not belong to Scheduled Caste ('SC' for short) since according to the petitioner the respondent No.1 does not belong to Beda (Budaga) Jangama community notified as SC under the presidential order at Item No.4 of IV in Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956. The case of the petitioner is that the said Beda (Budaga) Jangama Caste is stated to be prevalent in Gulbarga, Bidar and Raichur District but not in Kolar District. In order to contend so, the petitioner has also averred that while admitting respondent No.1 into school by the parents, it has been stated that he belongs to '*Byragi*' caste as recorded in the admission

records which is also indicated in the Transfer Certificate when he was studying SSLC. It is contended that in some sale deeds relating to his family members and relatives they have been described as belonging to 'Jangala' caste. It is contended that the said '*Byragi*' or 'Jangala' caste is not the same as Beda (Budaga) Jangama nor are they SC. The '*Byragi*' caste is notified as Backward Caste Category-I in the Government Order dated 30.03.2002 and as such it cannot be considered as Scheduled Caste. The respondent No.1 at an earlier point on 04.04.2008 had filed an application seeking issue of caste certificate but the same was rejected by the Tahsildar-Mulbagal stating that respondent No.1 belongs to '*Byragi*' Caste.

4. The petitioner contends that the caste certificate dated 03.04.2012 relied upon by the respondent is concocted, manipulated, bogus and the computer generated print out is not genuine certificate. The discrepancies as appearing on the face of it is referred to contend that the said manipulations itself would indicate that it is bogus. The said forged

computer print out caste certificate is relied upon to file the nomination as a candidate belonging to '*Budaga*' *Jangama* (SC). It is contended that the respondent No.1 belongs to '*Byragi*' community which is entered in the school records. '*Byragi*' is not a Scheduled Caste but is Backward Category I.

5. The further contention is that the respondent No.1 hails from K.R.Puram, Bengaluru and has a house in Ramamurthynagar but is presently claiming to belong to Maraheru Kottur village. There are no persons belonging to '*Budaga*' *Jangama* in Kolar District. The custom, tradition and religious practices of '*Byragi*' and '*Jangala*' community is entirely different from that of Budaga (Beda) *Jangama* caste.

6. The petitioner contends that he brought the same to the notice of the Returning Officer during the scrutiny of nomination papers on 18.04.2013 but, the same was disregarded. In the year 2008 also, the respondent No.1 had made an application for issuing caste certificate as '*Budaga*' *Jangama*. The Tahsildar

Mulbagal Taluk issued the endorsement dated 04.04.2008 and rejected the application of the respondent No.1. The District Caste Verification committee headed by the Deputy Commissioner, Kolar District by its order dated 12.04.2008 rejected the claim of the respondent No.1 and his uncle Sri Gangireddy holding that they belong to '*Byragi*' community. The respondent No.1 filed W.P.No.5932/2008 challenging the endorsement dated 04.04.2008 without disclosing about the order passed by the District Caste Verification Committee and in that light managed to obtain an order dated 12.09.2008 reserving liberty to prefer an appeal under the Scheduled Caste/Scheduled Tribes and Other Backward Class (Reservation of Appointment) Act, 1990 ('the Act' for short). The petitioner however did not file any other proceeding.

7. When this was the position, one Sri Amarnath had applied seeking information about the caste of respondent No.1 and an endorsement dated 29.09.2011 was issued to him by the Tahsildar stating that no caste certificate was issued to Respondent No.1.

Subsequently on the complaint lodged by one Sri Venkatachalapathy the Tahsildar after conducting detailed enquiry has arrived at the conclusion that no such caste certificate was issued from his office and the same is a created document. Accordingly, an endorsement dated 15.09.2012 was issued directing respondent No.1 not to make use of the caste certificate. Despite the same, the respondent No.1 has been using the concocted caste certificate. One Muralidhar had brought this fact to the notice of the Tahsildar and the Tahsildar issued an endorsement dated 14.03.2013 to Sri Muralidhar stating that the computer generated caste certificate dated 26.11.2010 and 03.04.2012 being relied by Respondent No.1 were concocted.

8. It is contended that on 13.04.2013 an FIR has been registered by the Mulbagal Police in Crime No. 149/2013 based on the complaint of the Tahsildar-Mulbagal Taluk against one Sri.Srinivas M who was working as a clerk in the office of the Tahsildar, for creating false certificate. The said Sri.Srinivas was accordingly suspended. The respondent No.1 however

managed to stall the proceedings being initiated against him also by filing W.P.No.13679/2013 and W.P.No.17122/2013. The petitioner further referring to the manner in which the respondent No.1 has been making use of the false caste certificate dated 03.04.2012 and in that background the nomination being accepted, has sought for the prayer in this petition as noticed.

9. The respondent No.1 has filed a detailed written statement disputing the case put forth by the petitioner. He contends that he had filed his nomination to both No.145 Mulbagal constituency and No.146 KGF constituency both of which are reserved for SC and his nominations were accepted. However, he withdrew the nomination from KGF constituency and contested in Mulbagal constituency after it was accepted. The respondent No.1 contends that he submitted an application dated 04.04.2008 and the Tahsildar on receipt issued an endorsement rejecting the application. The Caste Verification Committee through the order dated 12.04.2008 had also rejected

the claim. He however contends that the rejection thus made was for non-production of sufficient documents to substantiate his claim and in that view though the W.P.No.5932/2008 was disposed of reserving liberty to file an appeal, he did not choose to file the appeal as at that point he did not possess sufficient material to substantiate his claim. Instead of preferring an appeal he contends that a fresh application was made before the Tahsildar for issue of *Budaga Jangama* caste certificate by enclosing the necessary documents. The same was forwarded to the Deputy Commissioner who after receipt of the letter dated 01.06.2010 from the Tahsildar directed the Tahsildar to take action as per law and also as per the Circular dated 16.03.2008. Another Circular dated 17.07.2010 was also issued by the Deputy Commissioner relating to issue of caste certificate.

10. The respondent No.1 contends that a caste certificate was issued on 26.11.2010, but strangely the Tahsildar had taken a stand that he never issued the caste certificate. The respondent No.1 alleges that the

Tahsildar who was hand in glove with the political opponents had removed the entire file relating to issue of caste certificate dated 26.11.2010. In that view, he once again made an application dated 02.01.2012 before the Deputy Commissioner to grant the caste certificate by producing supporting documents. The Deputy Commissioner after receipt of the application forwarded the same to the Tahsildar vide letter dated 20.01.2012. The Tahsildar had thereafter submitted the detailed report dated 02.03.2012 recommending for issue of caste certificate. One more report dated 19.03.2012 was made recommending issue of caste certificate. The Deputy Commissioner after receipt of the recommendation has passed an order dated 24.03.2012 directing the Tahsildar to issue caste certificate in accordance with law.

11. It is further contended by respondent No.1 that the Tahsildar after receipt of the order dated 24.03.2012 had passed an order dated 27.03.2012 classifying the petitioner as *Budaga Jangama*. It is contended that the Tahsildar had also made an entry in

the register maintained in his office and a caste certificate dated 03.04.2013 came to be issued in favour of respondent No.1. Hence it is contended that the allegation of the petitioner that it is a fabricated document is unfounded.

12. It is also contended that immediately after he became aware of the entries in the column of the school records showing as '*Byragi*' community, he made representation to the Head Master and also the Block Education Officer to rectify the caste as *Budaga Jangama*. Since the representation was turned down, the respondent No.1 filed a suit in O.S.No.107/2012 before the Civil Court for rectification of the entries. In the above background the respondent No.1 seeks to justify the caste certificate obtained by him and further seeks to contend that he belongs to *Budaga Jangama* caste and in that light contends that the acceptance of his nomination from the SC reserved constituency is in accordance with law. He therefore seeks for dismissal of the petition.

13. The respondent No.2 who is the brother of respondent No.1 has filed a separate written statement denying the contents in the petition and seeking to justify that they belong to *Budaga Jangama* caste.

14. In the light of the rival pleadings of the parties, the following issues are framed for consideration:

ISSUES

“

1. *Does the petitioner prove that the first respondent belongs to 'Byragi' Caste?*
2. *Does the petitioner prove that the caste certificate dated 03.04.2012 produced along with the nomination form, by the first respondent as belonging to Budaga Jangama caste is concocted and obtained by playing fraud?*
3. *Does the petitioner therefore prove that the first respondent was not qualified to contest from No.145 Mulbagal Assembly Constituency reserved for Schedule Caste?*
4. *Does the first respondent prove that he belongs to Budaga Jangama (SC) and was entitled to contest from reserved constituency?*
5. *Does the petitioner prove that the acceptance of the nomination of the first and second*

respondents for the reserved constituency is illegal and has materially affected the election result?

6. *Does the petitioner prove that the voters of the constituency had knowledge that the first respondent does not belong to schedule caste and the votes cast in his favour are void?*
7. *If so, does the petitioner prove that the votes secured by the first respondent are to be treated as 'thrown away' and the petitioner is entitled to be declared elected?*
8. *Does the petitioner establish that this Court should penalize the first and second respondent as per Sec.125-A of the Representation of People Act?*
9. *What order? "*

15. In order to discharge the burden cast on the parties by the above noted issues, the petitioner examined himself as PW.1 and the witnesses as PW.2 to PW.11 and got marked the documents at Exhs.P1 to P99. The respondent No.1 on the other hand got himself examined as RW.2 and the witnesses as RW.2 to RW.9 and got marked the documents at Exhs. R1 to

R70. None of the other respondents including the respondent No.2 have chosen to tender evidence.

16. In the background of the averments made, evidence tendered and the materials relied, I have extensively heard Smt.Pramila Nesargi, learned senior counsel for the petitioner, Sri Ashok Haranahalli, learned senior counsel for respondent No.1, Sri G.Krishnamurthy, learned senior counsel for respondent No.12 and Sri N.S.Seshadri, learned counsel for respondent No.2.

17. Taking note of the nature of the contentions as put forth and keeping in view that the issue herein relates to the social status as claimed by respondent No.1 and that he has taken advantage of the same, the learned senior counsel for the petitioner has relied on the decision in the case of ***Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others (AIR 1995 SC 94)*** wherein the Hon'ble Supreme Court has laid down the guidelines which is required to be followed in considering the caste

status. The application for grant of social status certificate is to be made to the Revenue Sub-divisional Office and the Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than the Officer, Taluk or Mandal level. The parent, guardian or the candidate shall file an affidavit duly attested with particulars of castes, sub-castes etc. The State Government should constitute a committee and each Directorate should constitute a Vigilance Cell consisting of Senior Deputy Superintendent of Police and such number of Police Inspectors to investigate into the social status of the claims. The method to be followed is also indicated. The Inspector should go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city the place from which he originally hailed from. The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parents or guardian as the case may be. He should also examine the school records, birth registration if

any. He should examine the parent, guardian or the candidate in relation to their caste etc or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma. The peculiar anthropological and ethnological trades, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc should be taken note. In that light the stringent guidelines laid down to recognize the caste status is emphasized and the manner it is to be established.

18. The case of ***Director of Tribal Welfare, Government of A.P. vs. Laveti Giri and another*** ***[(1995)4 SCC 32]*** wherein it is held that the burden of proving the genuineness of the caste certificate and the social status is always on the person who profess it to seek constitutional socio-economic advantages is relied on by the learned Senior Counsel for the petitioner. It is also held therein that it is no part of the duty of the State to disprove or otherwise. The very procedure as contemplated in the case of Madhuri Patil has been

reiterated therein for the purpose of consideration of the social status. In that background learned Senior Counsel for petitioner also relied on the case in ***Punit Rai vs. Dinesh Chaudhary [(2003)8 SCC 204]*** wherein it is held that when the initial burden is discharged by the election petitioner, the onus would shift on the respondent to prove his case which is within his special knowledge. If the respondent fails to prove the special knowledge by producing the best evidence, an adverse inference could be drawn. Hence it is contended that heavy burden rests on the respondent No.1 to prove the social status of the caste he professes.

19. The learned senior counsel for respondent No.12 has also relied on the very decision in the case of ***Punit Rai -vs- Dinesh Chaudhary (AIR 2003 SC 4355)*** with emphasis to the portion wherein an earlier decision is referred and held that the party upon whom the burden lies to prove the fact, but fails to discharge the onus, it is not open for him to bank upon the plea of non examination of witness by the other party. Such party cannot be permitted to derive strength from the

weakness of the case of the other party. In the facts therein it was found that the onus to prove the facts within the special knowledge of the respondent No.1 therein had not been discharged. Accordingly appeal was allowed and the election was set aside. He has also relied on the case of ***Addagada Raghavamma and another -vs- Addagada Chenchamma and another (AIR 1964 SC 136)*** - wherein it is enunciated that there is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. In the case referred, it was held that the burden of proof lay upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstance of a particular case may shift the onus of proof. Such a shifting of onus is a continuous process of evaluation of evidence. It is therefore contended that the factum of his caste and thereby the social status which he seeks to take advantage is to be always

established by the respondent No.1 and the burden will always remain on him to prove the same.

20. The learned senior counsel for the respondent No.1 on the other hand has relied on the case of ***Shiv Charan Singh -vs- Chandra Bhan Singh and others [(1988) 2 SCC 12]*** - wherein it is held that though the Act has been amended several times the Parliament has not altered the burden of proof placed on the election petitioner under Section 100 (1) (d) of the Act. It is not possible to avoid the election of the returned candidate on speculations or conjectures relating to the manner in which the wasted votes would have been distributed. In the absence of positive proof of material effect on the result of the election of the returned candidate, the election must be allowed to stand and the Court should not interfere with the election on speculation and conjectures. The case of ***R.P.Moidutty -vs- P.T.Kunju Mohammad and another [(2000) 1 SCC 481]*** - wherein it is held that it is basic to the law of elections and election petition that in a democracy, the mandate of the people expressed at the

hustings must prevail and be respected by the Courts and the election of a successful candidate is not to be set aside lightly. A heavy burden lies on the election petitioner to prove corrupt practice. The onus of proof is not discharged merely on preponderance of probabilities. The standard of proof required is akin to that of proving a criminal or a quasi criminal charge. Clear cut evidence, wholly credible and reliable is needed to prove beyond doubt the charge of corrupt practice. In that light the learned senior counsel contends that the burden is heavy on the petitioner.

21. From a perusal of the above decisions, there can be no dispute with regard to the position that the Election petitioner having approached this Court putting forth certain contentions, the initial burden would be on him to discharge. Once the initial burden is discharged, the onus would shift on the respondents. While taking note of these facts what is also to be kept in view is that in an election petition wherein the corrupt practice is alleged, there cannot be vague charges and the burden is extremely heavy on the

petitioner. In the instant case, the contention however put forth on behalf of the petitioner is that as per the very school records of the respondent No.1, his caste is shown as '*Byragi*' as he belongs to that caste and when that has stood the test of time the respondent No.1 cannot claim a social status to take advantage of the same. The respondent on the other hand has contended that such entry in the school records is erroneously made and in that view he asserts that he belongs to *Budaga Jangama* and claims a social status which requires strong evidence. Hence if the petitioner brings home the evidence to show that the school records indicate that the respondent No.1 is shown as '*Byragi*' at an undisputed point in time, the pendulum would swing towards respondent No.1 to conclusively prove that he actually is of *Budaga Jangama* caste and such entry in the school record is contrary to the factual position.

22. In the light of the said contentions, the issue No.1 casts the initial burden in that manner for the petitioner to prove that the first respondent belongs to

'Byragi' caste as is depicted in the school records as contended. In view of the assertion of respondent No.1 about his caste to claim the social status, issue No.4 casts the burden on the respondent No.1. Apart from the issues Nos.1 and 4 therefore being intertwined, the other issues would become consequential even though they cast the burden relating to the caste certificate as claimed and in that light the evidence as tendered is required to be taken note. If the initial burden is discharged by the petitioner, the burden would be heavy on respondent No.1 as he claims benefit to a social status and take advantage of the same.

23. In the above noted circumstance, the petitioner having examined himself as PW-1 has stated with regard to the school records pertaining to the respondent No.1 and the caste of the respondent No.1 being shown as 'Byragi'. The documents at Ex.P-4 and P-5, the admission register and Transfer Certificate are marked. The documents at Exhs.P-8, P-9 and 9(a) are also marked. Sri K.M.Venkateshappa, Vice Principal, Nehru Kennedy High School, Byrapur is examined as

PW.5. The Admission Register for the period 1986 to 1992 is marked as Ex.P92. The Register for the period 1990-1995 is marked as Exh.P-93. The entry contained at Sl.No.4 relating to respondent No.1 for the academic year 1992-93 is marked as Ex.93(a). As per the entry, his caste is shown as '*Byragi*'. The name of respondent No.2 is shown at Sl.No.3 for the academic year 1989-90 and is marked as Ex.P.92(a). His caste is also indicated as '*Byragi*' and that he joined the school for the VIII Std during the said years. The Transfer Certificate marked as Ex.P5 is also accepted by PW-5, as having been issued from the said Nehru Kennedy High School. The document at Ex.P8 is also accepted as the list issued from the said school. It is elicited in the cross examination that the entry is not made at the instance of the parents, but was based on the information available in the Transfer Certificate of the VII Std. It is further elicited from the said witness about the customs and the dress being worn by them and the persons belonging to *Budaga Jangama* caste follow the same

and that persons belonging to *Budaga Jangama* caste have also secured admission in the school.

24. Sri Devaraju N, the Block Education Officer was examined as PW.7. He has also referred to the documents marked as Ex.P8 being the list of students studied from Kottur village during the period 1977 to 31.03.1993. The name of the first respondent is referred at Sl.No.15 and that of respondent No.2 at Sl. No.6. The document at Ex.P4, the admission extract relating to the first respondent is also referred and the caste shown as '*Byragi*' is stated by the witness. The admission register at Ex.P35 relating to Nehru Kennedy School indicating the seal of the Government Kannada Lower Primary School, Kottur is referred. The Transfer Certificate at Ex.P94 is shown to the witness and marked after overruling the objections. The Transfer Certificate is dated 22.07.1991 and the Caste is indicated as '*Byragi*'. The said witness has been subjected to cross examination and he has stated that he is not in a position to say as to on what basis the entries have been made in Ex.P8 and he cannot say who

has provided the details for making the entry in the document at Ex.P8. It has been suggested to him that the Ex.P8 is not genuine as the original is not available to which he has stated that it could be true. He has also stated that he cannot say the basis on which the caste as 'Byragi' has been entered either in Ex.P4 or in Ex.P35.

25. The evidence as tendered through PW.1, PW.5, PW.7 and the documents marked and referred to above would indicate that at an undisputed point of time the school records indicated the name of respondents No.1 and 2 and their caste was depicted as 'Byragi'. The learned senior counsel for the petitioner has relied on the decision in the case of ***Desh Raj vs Bodh Raj [(2008)2 SCC 186]*** wherein it is held that entries in the admission register made a long period earlier has evidentiary value and documents more than 30 years old attracted presumption as to its validity. In so far as the caste certificate issued in the said case by the Executive Magistrate is concerned, it was observed that such caste certificates are not given after thorough

investigation. It is also held that, when the primary evidence regarding caste is led by the appellant and the attempt of the respondent is to claim to be a Schedule Caste, the caste certificate issued by the Executive Magistrate cannot be taken as evidence to prove the caste of the respondent.

26. Reliance is also placed by the learned senior counsel for petitioner, on the decision in the case of ***Prabhudev Mallikarjunaiah vs. Ramachandra (E.P.No.3/1991, DD 27.10.1994)*** - wherein it is held that even assuming that the certificate is issued by a competent officer, the Returning Officer was not precluded from not relying upon it if there was other material to indicate that the petitioner did not belong to Beda Jangam . In that case the extract of the admission register and the affidavit of the sister which indicated that the petitioner belonged to Jangam Lingayath and not Beda Jangam caste was available. In that view it was held that the Returning Officer need not have relied on the caste certificate. The contention raised therein that the nomination paper was accepted in the earlier

election was noted and it was held that when there were other documents, the mere fact that the nomination had been accepted in the earlier election cannot be a ground to hold that he belong to Beda Jangama caste. The decision reported in (1996) 4 SCC 431 is relied to show that the judgment in E.P.No. 3/1991 was upheld by the Hon'ble Supreme Court and to contend that the entries in the school records would have evidentiary value and moreso when such entries are more than 30 years old, the presumption would arise in law and as such the caste as indicated therein should be conclusively accepted by this Court.

27. The learned senior counsel for respondent No.1 on the other hand would refer to the decisions in the case of ***M.Chandra -vs- M.Thangamuthu and another - [(2010) 9 SCC 712]*** wherein it is held that the reliance placed on the birth records, entries in the telephone application and voters list cannot be the sole ground for proving that the appellant therein was professing Christianity. It is observed in the said case that such records could have been made by people other

than the person concerned. It was further observed that the entry in the birth register in that case was not made by the parents but by the Village head nurse. It is also held therein that in an election petition the facts presented must be clear and when people have elected their representative it cannot be taken lightly. The person who files the election petition should have a definite case to prove that the election was illegal. Therefore the burden of proof shall lie on the petitioner. Even if the allegation is not of corrupt practice, the same will not be lesser in seriousness. Hence the burden of proof is on the election petitioner to prove the charges beyond reasonable doubt.

28. The learned senior counsel for the respondent No.1 has further relied on the case of ***Birad Mal Singhvi -vs- Anand Purohit [1988 (Supp) SCC 604]***, - wherein it is stated that if the entry regarding date of birth in a school register is made on the information given by the parents or someone having special knowledge of the fact, the same would have probative value but if it is given by a stranger such entry will have

no evidentiary value. The case of ***Sushil Kumar -vs- Rakesh Kumar [(2003) 8 SCC 673]***, - wherein, with reference to Sec.35 of the Evidence Act it is held that a register maintained in terms of a statute or by a statutory authority in regular course of business alone would be a relevant fact and only if such vital evidence is produced, it would clinch the issue and the case of ***Jabar Singh -vs- Dinesh and another, [(2010) 3 SCC 757]***, - wherein, in the facts arising in that case it was held that the entry of date of birth in the admission form, the school records and transfer certificates did not satisfy the conditions laid down in Section 35 of the Evidence Act as the entry was not in the public or official register, are relied upon.

29. That apart reliance is placed in the case of ***Babloo Pasi -vs- State of Jharkhand and another [(2008) 13 SCC 133]***, - wherein it is held that to render a document admissible under Section 35, three conditions have to be satisfied, namely; (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be a entry stating a fact in

issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. The said decision is cited to contend that the reliance in the school registers can be placed only if such entry is made based on the details furnished by the parents and the details as entered on the information furnished by strangers cannot be the basis. It is also contended that the original registers are not produced and the same not being public documents cannot be relied upon.

30. Having taken note of the decisions cited by either side, the fact situation herein is that the school records produced would indicate that they are of the periods from 1977 onwards and the fact that the respondents No.1 and 2 had studied in both the schools

referred is not in dispute. Though in the cross examination of PW.5 it is attempted to extract that the entry of the caste is not made based on the information furnished by the parents, the witness has stated that the entry is based on the Transfer Certificate issued from the earlier school. In that regard, when PW.7 has referred to that aspect there is no detailed cross examination on that aspect.

31. Be that as it may, when the entries are contained therein and even if certain suggestions were put to PW.5 and PW.7 in an attempt to indicate that they have no knowledge as to on what basis the caste of respondent No.1 and 2 has been entered and obviously when the admission of respondents No.1 and 2 was to the primary school when the first admission was made to the Government School and was for the VII Std in the Nehru Kennedy school, the respondent No.1 would not be aware of the details and it should be their elders unless the contrary is proved. Therefore, if the respondent No.1 was to contend that the entry contained in such a document maintained at an

undisputed point in time was made without basis and is an error, the respondent No.1 ought to have examined such reliable witness to speak about the fact as to who had secured and admitted the respondents No.1 and 2 to school and what was the nature of the information that was furnished. Without doing so, a dispute cannot be raised all of a sudden, out of the blue when it becomes inconvenient nor does any suggestions put to the petitioner's witness be material.

32. That apart though a contention is raised that the documents as marked cannot be relied on as it is not a public document and the original had not been produced by placing reliance on the decisions as noted above, the contention to that effect cannot be accepted in the present context inasmuch as the very averment as contained in the written statement of respondent No.1 and the plaint in the admitted suit filed by respondent No.1 in O.S.No.107/2012 at Ex.P42 would indicate the fact that such documents are maintained in the schools concerned and the entries are made with regard to the caste as contained therein though it is

alleged that it is entered wrongly. In fact, it is the admitted position and the respondent No.1 in fact was making attempts to secure corrections of the same and had failed in such attempt as seen from the judgment passed in O.S.No.107/2012 at Ex.P45. In the above circumstance, keeping in view the reasons for which the petitioner had contended that respondent No.1 is a person belonging to 'Byragi' community and that the entries to such effect has been made in the school records has been satisfactorily brought on record, the petitioner has discharged the burden in proving the issue raised.

33. The learned senior counsel for the respondent No.1, by relying on the decision in the case of **Laxman Siddappa Naik -vs- Kattimani Chandappa Jampanna and others (AIR 1968 SC 929)** - wherein it is held that the ordinary rule is that the person, who as a plaintiff, asserts a fact, has to prove it. The election petitioner therein was to prove that he was a Bedar and that would have proved that he was not a Nayaka. To establish the fact, evidence was required to show the

characteristics such as custom in marriage, births, deaths etc to distinguish the two. It is held that a bare assertion that the appellant is a Bedar is not sufficient to displace the acceptance of the nomination paper or the claim of the appellant that he is a Nayaka. In that view it is contended that the petitioner has not tendered evidence to prove the customs and traditions followed by '*Byragi*' and to establish that the respondent No.1 was following the same. He therefore contends that the petitioner has failed to prove that respondent No.1 belongs to '*Byragi*' caste. The said decision is not of assistance in the instant case since as already noticed the nature of contention as putforth relating to school records, based on which it was alleged that respondent No.1 is '*Byragi*', it has been proved with acceptable evidence and the burden is discharged. In that view, the issue No.1 is to be held in the affirmative in favour of the petitioner and the burden is shifted on the respondent No.1 to establish that he actually belongs to *Budaga Jangama* based on the direct evidence before

this Court without the aid of the caste certificate which is in the centre of dispute.

34. On that aspect, the respondent No.1 has examined himself as RW.1 and has stated that he belongs to Budagajangama community and that the avocation of the parents was roaming from village to village by playing the musical instrument called the Budaga but they were wrongly called as Sanyasi, Jangalu etc and the same has been entered in the sale deeds due to illiteracy and ignorance. He states that his parents have never affixed their signatures in the school records and refers to the tradition and custom as also the religious practices followed by Budagajangama community. In that background the respondent No.1 refers to the Tahsildar having taken note of the custom being followed and in that light having issued the caste certificate. The respondent No.1 in order to contend that persons belonging to Budagajangama caste are residing in Kolar District has referred to the contents in Kolar Gazetteer which is marked as Ex.R.1.

35. Essentially in order to state about the customs and traditions followed by persons belonging to Budagajangama and in that light having relied on the alleged Mahazar as per Ex.R26 in support of the caste certificate, the very persons who claim to have affixed their signature as witnesses to the said mahazar (Ex.R26) are examined as witnesses to state about the customs and traditions followed by persons belonging to Budagajangama, before this Court. Sri M.B.Anwar is examined - RW.3. He states that respondent No.1 belongs to Budagajangama caste and that he and his elders would normally knot their hair at the top and wear a head scarf. They would also wear a bead chain and carry an instrument called *Budaga*. They would visit the houses seeking alms and predict the future of the people. They would thus collect money, food grains etc., and make a living. The custom followed in their marriages is stated by him. Another witness Sri Mallikarjuna Reddy is examined as RW.4. He claims to be a member of Grama Panchayat and is also a signatory to the alleged Mahazar (Ex.R-26). He would

also state that the respondent No.1 belongs to *Budagajangama* caste and the custom that is followed by them and he states that he had mentioned to the Tahsildar about such custom being followed by respondent No.1 which is the same as being followed by persons belonging to *Budagajangama*. Sri M.Venkataramana who is another witness to the alleged mahazar (Ex.R-26) is examined as RW.5. The said witness has also stated with regard to the dressing pattern of the persons belonging to *Budagajangama*, their nature of worship and the practice that is followed in performing the marriages and also in the funeral etc.

36. The learned senior counsel for the respondent No.1 while referring to their evidence has contended that the customs and traditions of *Budga Jangama* being followed and as referred to in the evidence has not been disputed by the petitioner by cross examining on that aspect and as such has relied on the decision in the case of ***Gian Chand and others -vs- State of Haryana [(2013)14 SCC 420]***, - wherein the effect of cross examination by putting the version to the witness

and providing adequate opportunity to the witness in the witness box to give full and proper explanation is emphasised and states that in the absence of cross examination the statement of the witnesses is required to be accepted.

37. Taking into consideration such contention, at this stage itself it is to be noted that insofar as issue No.4 which is framed herein and in that light the evidence tendered on the said issue by RWs.3, 4 and 5 if it is taken into consideration, at the outset it is seen that none of the persons belong to the community regarding which a consideration is being made nor do they state about their expertise to give such details. The manner in which they have stated with regard to the customs being followed though there is corroboration in their version, keeping in view their age, nature of profession and there being no material in the first instance to indicate that apart from the respondents No.1 and 2, Sri Kullayappa and Sri Gangireddy who claim to belong to that community, whether there are other persons residing in the village.

The evidence tendered by the said witnesses appear to be as tutored witnesses and no reliance is possible to be placed on their evidence even if there was no cross examination on that aspect as essentially it is seen that the cross examination is concentrated on the claim made by them as mahazar witnesses.

38. Apart from the above noted witnesses one Sri Sheshappa is examined as RW.9. The said witness no doubt claims that he belongs to *Budaga Jangama* and was the president of the Karnataka Rajya *Budaga Jangama* Kshemabhivruddhi Sangha. He states that he knows respondent No.1 since the daughter of the said witness has married the brother of respondent No.1, Sri Prasanna Kumar. In that view he states that respondent No.1 belongs to *Budaga Jangama* community to which he belongs. The said witness also has stated with regard to the tradition and custom followed by the *Budaga Jangama* community in the same manner as has been stated by the other witnesses as referred to above. However, the said witness in his cross examination has admitted that his caste is

recorded as '*Bavacha*' in the school records and the said caste belongs to Scheduled Tribe. He states that *Bavacha* and '*Byragi*' are different castes and in the modern society, there would be inter-caste marriages. In that view the marriage alone cannot be the basis that too when he himself is not proved to be Budga Jangama. Though he denies the suggestion that he does not belong to *Budaga Jangama* caste, except for his bald statement before the Court, no material whatsoever has been produced either with regard to the said witness following the practices of *Budaga Jangama* caste more particularly when he admits that his school records indicate his caste as '*Bavacha*'.

39. At this stage, having taken note of the decision in the case of *Laveti Giri* (supra), it is clear that the burden to prove is on the person who seeks the social status and by professing it seeks constitutional socio-economic advantages. The burden is therefore heavy on the respondent No.1 to establish not only that there are persons belonging to Budaga Jangama in Kolar district or even if he had migrated from any other

place he in fact belong to Budaga Jangama caste. The only document apart from the disputed caste certificates on which reliance is placed by respondent No.1 is on Ex.R.1 viz., the Kolar Gazeteer. The learned senior counsel for the petitioner has however relied on the decisions in the case of **Dayaram vs. Sudhir Batham and others [(2012)1 SCC 333]**, wherein reference is made to the directions issued in Madhuri Patil's case and it is observed that genuine candidates are denied the benefit for want of social status certificate. Hence it is in that view reiterated that the guidelines issued by the Supreme Court are to be followed for determining the caste status. Reliance is also placed on the case in **Geeta vs. State of Madhya Pradesh and others [(2007)10 SCC 590]**. In that case where Anthropological Survey of India prepared by one Majumdar D.N. -'The Radical Basis of Indian Social Structure' was referred with reference to the word "Majhi" and an attempt was made to show that in such situation the finding recorded by the High Level Committee is erroneous, the same was not accepted by

the Hon'ble Supreme Court as authenticated document and observed that no such reliance can be placed for deciding the tribal status of the appellant therein. In that view the learned Senior Counsel contends that the reliance as placed on the Gazetteer (Ex.R-1) cannot be accepted. Such reliance by itself would not be sufficient without there being any other oral or documentary evidence to indicate that the forefathers of the respondent No.1 belonged to Budagajangama and that the respondent No.1 is therefore belonging to Budagajangama.

40. The learned Senior Counsel for respondent No.1 has relied on the decision in the case of **Anand -vs- Committee for Scrutiny and Verification of Tribe Claims and others [(2012) 1 SCC 113]**,- wherein it is stated that while applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted since with migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match

with the traditional characteristics of the Tribe. Hence it is held that affinity test may not be regarded as the litmus test but may be used to corroborate the documentary evidence and should not be the sole criteria to reject the claim. Even if the said decision as relied by learned senior counsel for respondent No.1 is kept in view and the cross examination of RW.1 wherein the learned senior counsel for the petitioner has sought to bring out the fact that respondent No.1 is presently residing in Bengaluru and that he is leading a modern life is taken into consideration, those aspects would have arisen as a secondary consideration if at the outset the respondent No.1 had established that his forefathers belonged to the *Budaga Jangama* community and the change in respondent No.1 is due to economic progress. In that regard, as noticed, apart from the oral evidence of RW-1 and RW-9 as tendered there is no other evidence on record even to basically establish the fact that the forefathers of respondent No.1 were *Budaga Jangama*.

41. Even if the parents of the respondent No.1 were not alive any other elders of the family ought to have been examined and in that regard there is no explanation whatsoever. Though Ex.R-1 is sought to be relied to contend that there are persons of *Budaga Jangama* caste in Kolar District, not a single person who admittedly belongs to that community and resides in Kotthur of Malur has been examined. The RW-9 who deposed claiming to be from *Budaga Jangama* Community is from Ramanagara. Despite the respondent No.1 has sought to contend that his uncle Sri Kullayappa had contested as a SC candidate and was elected as a Panchayat member and seeks to place strong reliance on the fact that the caste certificate at Ex.R-11 was issued to him and also issued to respondent No.2 who is his elder brother has not been challenged by filing objections, neither of them have entered the witness box to state with regard to their affinity to the caste or to speak about their predecessors and the manner in which they were professing by following the traditions and customs of the caste.

42. In fact, in the instant case, it is intriguing to notice that respondent No.2 who is a brother of respondent No.1, being a party to the instant proceedings, having entered appearance through a counsel and participated in the proceedings has not chosen to tender evidence nor has respondent No.1 chosen to secure him as a witness. In this regard it would be relevant to refer to the decision in the case of ***Vidyadhar vs. ManikRao and another [(1999)3 SCC 573]***, – relied on by the learned Counsel for the petitioner, wherein it is held that where a party to the suit does not appear in the witness box and state his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. Though it is relied on by the learned senior counsel for the petitioner only to contend that the case put forth on behalf of respondent No.2 to support the respondent No.1 cannot be accepted in the absence of the respondent No.2 not having entered the witness box, the said situation in fact in my view should be held as adverse to the case of

respondent No.1. Despite the learned senior counsel for the respondent No.1 himself relying on the decision in the case of ***Ajai Verma -vs- Vijai Kumari - Privy Council (43 CWN 585)***, - wherein it is held that the opinions of responsible members of the family as to the existence of such a custom, and the grounds of their opinion, though generally in the nature of family tradition, are clearly admissible, no such attempt is made in the instant case and the evidence of RW-9 cannot be considered to be the evidence of such nature and credibility.

43. In that light, though the respondent No.1 having not examined any person belonging to his family or the caste to state about his caste and the genealogy, it is to be taken note that the petitioner on the other hand has examined one Sri Muralidhar as PW.8 who is a SC person and has been opposing the claim of respondent No.1 to belong to SC and had thus filed application before the Tahsildar seeking for particulars and to oppose the claim. Similarly one Sri M.Venkataramana has been examined as PW.9. The

said person also belongs to the SC. They have contended that the respondent No.1 is not a SC and since according to them a person not belonging to their caste was taking away the benefit given under the Constitution, they had made efforts to complain to the competent authorities and also to distribute pamphlets about the false claim of respondent No.1. Irrespective of the evidentiary value of the deposition of PWs 8 and 9, as already taken note except for seeking to rely on the Kolar Gazeteer at Ex.R.1, the caste certificates issued to him, his wife and children and on Ex.R.11 the caste certificate of his uncle Sri Kullayappa, which are in dispute there is no concrete evidence to establish that the respondent No.1 belongs to *Budaga Jangama*. Insofar as the caste certificate of respondent No.1 and his family members the very manner in which it has been obtained is the disputed question and insofar as the caste certificate of Sri Kullayappa, as already noted, he has not entered the witness box nor has his caste certificate stood the test after judicial review as there was no challenge in that regard to his election and it

has not been tested. Hence, from the available material, the only irresistible conclusion that can be drawn when no reliable evidence is placed before this Court to prove that he is a *Budaga Jangama*, is that the respondent No.1 is not a person belonging to *Budaga Jangama* caste. Hence Issue No.4 is held in the negative against respondent No.1.

44. The next issue for consideration is with regard to the validity of the caste certificate. On that aspect though issue No.2 casts the burden on the petitioner to prove that the caste certificate dated 03.04.2012 produced along with the nomination form by the first respondent as belonging to Budagajangama caste is concocted and obtained by playing fraud, keeping in view the nature of the contentions urged and the material brought on record it would also boil down to take note at the outset the position as to whether a second application by the petitioner would have been sustainable at all when the earlier application seeking for caste certificate admittedly had been rejected and such order had attained finality. In that background

the evidence available on record on that aspect is necessary to be taken note.

45. The contention as put forth on behalf of the petitioner in that regard is that at an earlier point when the respondent No.1 had made an application dated 04.04.2008 seeking issue of caste certificate as *Budaga Jangama*, an endorsement was issued to him stating that there are no persons belonging to *Budaga Jangama* caste in Majera Kottur village. The validity of such endorsement dated 04.04.2008 was considered by the District Caste Verification Committee on 12.04.2008 and it was held therein that the respondent No.1 belongs to Byragi caste and the request for issue of SC certificate as *Budaga Jangama* is rejected. The said order has remained undisturbed till today. The said factual aspect is not disputed inasmuch as the respondent No.1 in his objection statement has also admitted the said position and has sought to explain that he did not choose to challenge the same as he did not have sufficient material at that point and therefore he claims to have filed the subsequent application. The

evidence to that effect is available through the deposition of PWs.1, 2, 3 and 4. The endorsement dated 04.04.2008 is at Ex.P11. A perusal of the same would indicate that the same is issued by PW.2 on 04.04.2008 wherein it is categorically stated that the respondent No.1 has made the application dated 04.04.2008 seeking issue of caste certificate and the PW.2 Smt.Harishilpa who was the then Tahsildar having verified the application and having perused the report of the Revenue Inspector has taken into consideration the report wherein it is stated that respondent No.1 belongs to Byragi community. It is also observed therein that the school records of respondent No.1 shows that he belongs to Byragi community. The conclusion is that even though it is stated that persons are engaged in fortune telling, the instrument known as *Budaga* is not used as they do not belong to *Budaga Jangama* caste and the persons belonging to that caste are not residing in the village.

46. The document at Ex.P12 is the proceedings of the Caste Verification Committee dated 12.04.2008

while taking note of the claim made by Sri Gangireddy and the respondent No.1. A detailed consideration is made keeping in view the notification dated 07.09.2004 under Article 16(4) of the Constitution and after referring to the school records in the course of the enquiry has arrived at the conclusion that the respondent No.1 and Sri Gangireddy belong to the Byragi caste. The respondent No.1 though filed the writ petition in W.P.No.5932/2008, what is assailed therein is only the endorsement dated 04.04.2008 (Ex.P11) and not the order dated 12.04.2008 of the District Caste Verification Committee (Ex.P12). The said writ petition was disposed of on 12.09.2008, a copy of which is at Ex.P13. A perusal of the same would indicate that the petition is disposed of reserving liberty to the respondent No.1 herein to question the correctness of the endorsement dated 04.04.2008 under Section 3(b) of the Act, 1990. Though such liberty was reserved to assail the endorsement, the correctness of the endorsement dated 04.04.2008 (Ex.P11) had already been considered by the District Caste Verification

Committee as per Ex.P12 and the same had not been brought on record in the writ petition. Be that as it may, the rejection of the application has not been assailed before any forum nor was the conclusion of the Caste Verification Committee dated 12.04.2008 assailed, as such the same had attained finality.

47. When this was the position, one Sri N.M.Amarnath had filed an application under the Right to Information Act seeking particulars as to whether any caste certificate is issued to respondent No.1 and had accordingly sought for a copy, if the same had been issued. PW.3 who was the Tahsildar at that point in time has issued the endorsement dated 29.09.2011 as at Ex.P14 indicating that the verification of the records for the periods 02.04.2008 to 03.09.2011 would disclose that no caste certificate has been issued to respondent No.1 as *Budaga Jangama*. In that background, the said Sri Gangireddy and the respondent No.1 herein filed a suit in O.S.No.107/2012, a copy of the plaint in the said suit is marked at Ex.P42. Though initially a declaration of the caste as *Budaga Jangama* was sought, the same

has been amended subsequently for a direction to the defendants to rectify the school records and indicate the caste as *Budaga Jangama* in place of Byragi. It is relevant to note that in the plaint, the respondent No.1 herein as plaintiff No.2 has not stated about the caste certificate for the purpose of election as applied but he has averred that it is required for his employment as he is unemployed and is searching for job. This is referred by me only to indicate the manner in which respondent No.1 was making attempt to secure a caste certificate in any manner whatsoever.

48. The said suit has been dismissed by the judgment dated 27.09.2013 which is marked as Ex.P45. It is no doubt true the Civil Court has taken note of the pendency of the issue relating to caste certificate before this Court in this petition. However, the issues as framed for consideration therein would indicate that the plaintiffs therein viz., respondent No.1 and Sri Gangireddy had failed to prove that they belonged to Budagajangama caste and also had failed to prove that the school authorities had wrongly mentioned the caste

as Byragi. When a conclusive finding had been recorded about the correctness of the entry in the school records and a rectification was declined, the same is to be taken note herein. Therefore, the said conclusion and the documents as noted above itself would indicate that the respondent No.1 could not have filed one more application unless the findings of the District Caste Verification Committee and the Civil Court was set aside in an appropriate proceedings in accordance with law.

49. The learned senior counsel for respondent No.1 no doubt referred to the cross examination of Sri D.V.Ramamurthy (PW-4), the then Tahsildar wherein he has admitted that if the first application has been rejected only on the ground that the same is not supported by documents, a fresh application could be received if such application is accompanied by documents. In that view it is contended by the learned senior counsel for respondent No.1 that the second application made by respondent No.1 in the year 2012 based on which it is claimed that the caste certificate

dated 03.04.2012 is issued is justified. However, what is noticed is that PW.4 has also qualified his statement by further indicating that at the first time if it is rejected stating that he does not belong to that caste, a fresh application will not be received.

50. The learned senior counsel for respondent No.1 has also relied on the decision in the case of **C.M.Armugam -vs- S. Rajgopal and others [(1976) 1 SCC 863]**, - wherein it is held that it is true that the Court had held in the earlier case that on embracing Christianity, the respondent therein had ceased to be a member of Adi Dravida caste in the case relating to the earlier election on the basis of the evidence led therein and that cannot be resjudicata in the present case where fresh evidence has been adduced on behalf of all the parties and the parties are not the same, to contend that the earlier consideration will not be a bar. The facts therein are not akin to the facts herein and it is observed therein that the parties are also not the same. The decision in the case of **Ram Chandra Singh -vs- Savitri Devi and others [(2003) 8 SCC 319]**, - wherein

reference is made to an earlier case of the Supreme Court in which it is held that the principle of finality of litigation cannot be pressed to the extent of such absurdity that it becomes an engine of fraud. It is held that the Courts of law are meant for imparting justice between the parties. The said decision is also not of assistance.

51. In the instant case as already noticed, through the documents at Exhs.P11 and P12 while rejecting the application dated 04.04.2008 filed by respondent No.1 the application is not just rejected for want of documents in support of the same but a detailed consideration of the factual report of the Revenue Inspector, the school records and the position in the village is taken into consideration and a categorical finding is rendered that the respondent No.1 belongs to Byragi community and that there are no persons belonging to Budaga Jangama in Kottur village. In such situation unless such finding even if erroneous was rectified in an appropriate proceeding, the subsequent application even if filed a consideration

thereof would be hit by the principles of *res-judicata*. Therefore a subsequent application could not have been filed. Hence apart from the fact as to whether such application was actually filed, considered and orders passed, even if it was filed, any order would be without the force of law and the caste certificate even if issued cannot be recognised as a valid document when earlier proceedings are suppressed.

52. In that regard it is relevant to take note of the decisions relied upon by the learned senior counsel for the petitioner in the case of ***Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (dead) by Lrs and others [(1994)1 SCC 1]***, wherein the Hon'ble Supreme Court has held that even a decree obtained by nondisclosure of the document amounted to fraud on oath and the decree is liable to be set aside. It is held a fraud is an act of deliberate deception with design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant who approaches the Court is bound to produce

all documents and if any documents are withheld, he would be guilty of playing fraud. Reliance is also placed on the case of ***Bhaurao Dagdu Paralkar vs. State of Maharashtra and others*** [(2005)7 SCC 605],- wherein it is held that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. Fraud and justice never dwell together. A collusion or conspiracy with a view to deprive the rights of others would render the transaction void ab initio. Fraud and deception are synonymous. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res-judicata*.

53. In that background, firstly even if such application had been filed, no other additional material to support such application for a consideration to be made in that regard has been relied upon nor is there any change in circumstance than what it was earlier pointed out inasmuch as the school records etc., had all

remained the same and there was no scope for filing another application.

54. The Tahsildars who had worked at Mulbagal during the periods 26.11.2007 to 22.08.2009, 03.09.2009 to 12.08.2012 and 06.02.2012 to 22.04.2013 have been examined as PWs.2, 3 and 4. Insofar as PW.2 the witness has stated with regard to the rejection of the earlier application and no caste certificate being issued. Insofar as PW.3 he has stated that he was authorised to issue caste certificate only upto 03.12.2011 and thereafter PW.4 had assumed office on 06.02.2012. The respondent No.1 is seeking to rely on the document at Ex.R.9, an order alleged to have been passed by Sri Jayamadhava the then Tahsildar who is presently working as the Land Acquisition Officer, Ramanagar and is examined as PW.3. The said order bearing No.130/11-12 dated 27.03.2012 is to the effect that the caste certificate could be issued as Budagajangama to respondent No.1. In the cross examination of PW.2, though the order is confronted, he has disputed about passing such order. Though the

document at Ex.R.8 was shown to him about the order dated 13.07.2005, he has stated that since the Grade II Tahsildar had already taken over he did not take any further action pursuant to the letter dated 24.03.2012 received from the Deputy Commissioner. The order dated 27.03.2012 (Ex.R.9) though shown to him and marked, he has categorically stated that though he sees one signature as the original signature of the document, the other signature shown in the document is for attestation of the copy. He has stated that the signatures are not his and the suggestion to that effect has also been denied. He has categorically stated that the order at Ex.R.9 shown to him is seen by him for the first time in the box. He has categorically denied that he has passed the order at Ex.R.9. He has stated that he has no objection even if the said signature is referred to expert opinion.

55. In the background of the said evidence, a perusal of Ex.R.9 would disclose that even if the same is produced as a copy secured from the records, when such order is stated to have not been passed at all by

PW.3 who is alleged to be its author and when the original is not available, the same cannot be relied upon. The signature as contained in the document has not been admitted by PW.3 and no steps whatsoever has been taken by the respondent No.1 to establish the genuineness of the signature as belonging to that of PW.3. If that be the position, the entry as contained in the register at Ex.P59 as an entry for having issued the caste certificate to the first respondent also cannot be relied upon. The process for such issue of caste certificate is based on the alleged mahazar relied upon by the respondent No.1 as at Ex.R26. Though the witnesses RWs.3 and 4 claim to be witnesses to the alleged mahazar at Ex.R26 and contend that the same was drawn when the Tahsildar had visited the village, none of the Tahsildars examined as PW-2 to 4 have admitted to the same. The document at Ex.R26 is a copy said to have been obtained from the records and the original is not available. Though RWs.3 and 4 have identified their names in the alleged mahazar at Exhs.R.26(a) and (c), the signature of the Tahsildar is

not identified and marked. The said witnesses have however stated that the Tahsildar who has recorded the mahazar is Sri Jayamadhava, who in any case has been examined as PW.3 on behalf of the petitioner. In his evidence he has stated that he was authorised to issue the caste certificate only up to 03.12.2011 and the Tahsildar Sri Ramamurthy (PW.4) had assumed office on 06.02.2012. If that be the position, firstly, it cannot be accepted that on the alleged date of mahazar dated 17.02.2012 the said Tahsildar Sri Jayamadhava could have drawn the Mahazar. That apart the signature of Sri Jayamadhava is not found therein nor is it admitted by him though attempt was made on behalf of respondent No.1 to refer to a mark therein and suggest to PW-3 that it is his signature.

56. In addition, the very contents therein would not inspire the confidence of the Court that it has been actually drawn by a responsible Officer of the cadre of Tahsildar. Though in the evidence of RW.3 and 4 they have stated that the Tahsildar had asked them about the customs and tradition of the people belonging to the

caste of respondent No.1, the details to that effect is not found in the alleged mahazar. That apart even if a spot mahazar relating to the caste is to be drawn, and in that light the same is to be made the basis for issue of caste certificate, one cannot ignore the procedure that is enunciated by the Hon'ble Supreme Court in the case of Madhuri Patil (supra). In the normal circumstance, if the Tahsildar was holding a spot verification and drawing a mahazar, the appropriate course ought to have been to visit the house of the applicant, record the statement of the family members and neighbours, verify the school records and incorporate the same in the mahazar. Instead the procedure as adopted to the alleged mahazar is taken note, there is no reason as to why if in fact the Tahsildar had visited the village, he should have recorded the statement of RW.4 who even as per his own statement had come to the said village. That apart it does not contain the statement of any other member of the same caste if there were residents of the same caste in the village.

57. Therefore, the very nature of the documents sought to be relied on and the explanation sought to be put forth for the originals not being available due to which copies are obtained, on the face of it would indicate that the fabrication is writ large. Though the copies of the other documents are sought to be relied on, in the nature of the conclusion as reached on issue No.1 and 2 and also the nature of consideration made with regard to a second application not being sustainable and further the very veracity of the manner of consideration of the second application sought to be established by the respondent No.1, it would indicate that the caste certificate even if obtained by respondent No.1 is by manipulation of records and the documents cannot be accepted as established. The caste certificates at Exhs.R-21 to 24 issued to the other family members in such circumstance also will not have evidentiary value in support of respondent No.1. The decision in the case of ***State of Bihar and others -vs- Sumit Anand [(2005) 12 SCC 248]***, - wherein, on facts, it was held that in view of the fact the father,

grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to "Gond" community, the respondent therein was also entitled to the certificate, as relied by the learned senior counsel for respondent No.1 is also of no assistance in the present circumstance. In the instant case no certificates of the predecessors are relied, but what are relied are the certificates which are obtained in a similar manner which are also in dispute.

58. The decision in the case of ***Ayaubkhan Noorkhan Pathan -vs- State of Maharashtra and others [(2013) 4 SCC 465]***, - wherein it is stated that the Scrutiny Committee in ordinary circumstances examined the matter and after investigation through its vigilance cell and considering all the documentary evidence on record and after being satisfied granted the caste verification certificate, Section 114(e) of the Evidence Act provided the Court to pronounce that the decision taken by the Scrutiny Committee has been done in regular course and the caste certificate has been issued after due verification. It is held therein that

very strong material is required to rebut such presumption and the onus of rebuttal lies on the person who alleges that the act had not been regularly performed or procedure required under law had not been followed, relied on by the learned senior counsel for respondent No.1 is also not of assistance in the instant case wherein all the above stated discrepancies are noticed. In that light the need to refer to the other evidence would be unnecessary.

59. Further the respondent No.1 in an attempt to establish that the order dated 27.03.2012 is passed by PW.3 has sought to rely on the documents at Exhs.R.2 to R.5 and it is contended that pursuant to the orders passed by the Deputy Commissioner, the Tahsildar has thereafter held the proceedings and arrived at the conclusion. Though such attempt is made by respondent No.1, as already noticed the Tahsildars who had worked during the relevant period viz., PWs.3 and 4 have been examined and they have disputed any order being passed by them. In that circumstance when the entire basis for the reliance on the caste certificate at

Ex.R.25 is the order dated 27.03.2012 and when through the above discussion, I have already arrived at the conclusion that the passing of such order is not satisfactorily proved, the reliance placed on the other documents including the caste certificate issued to the family members as also the details as contained in Ex.R.68 to indicate that the caste certificate was issued to the other family members of the petitioner would also not be justified. Further the register at Ex.P59 which is marked by the petitioner to indicate that the entry contained therein at Sl.No.130/11-12 is not a genuine entry, which is on the other hand relied on by respondent No.1 seeking to contend that such entry is contained in the register, firstly it is seen that the said entry sought to be relied on at Sl.No.130/11-12 is the only entry in the register which is in the nature of an order while in the said register all other entries is not of that nature except to make an entry of the particulars. Further the Tahsildar who was examined has also stated that the entry in such nature in the register is not made. In that background the complaint as made

by the Tahsildar against Sri M.Srinivas who was examined herein by respondent No.1 as RW.8 would also indicate the allegation that the said documents have been inserted by him to aid the respondent No.1. Respondent No.1 no doubt has relied on the document at Ex.R65 which is a 'B' report filed after the investigation was carried out pursuant to the complaint lodged against Sri M.Srinivas.

60. A perusal of the document at Ex.R.65 no doubt would disclose that on investigation it is reported that no case is made out. In that regard the correctness or otherwise of the report need not be gone into in the instant proceedings inasmuch as the same if at all is to be assailed is to be done in appropriate proceedings. However, for the instant purpose what is necessary to be taken note is that the ultimate conclusion herein is with regard to the validity or otherwise of the caste certificate even if issued in favour of respondent No.1 as at Ex.R.25. In that regard as already noticed above, the Tahsildars who had served during the period have been examined as PWs.2, 3 and 4 and all of them have

denied that the caste certificate has been ordered to be issued by them nor is it issued by them. From the detailed cross-examination, nothing is elicited to indicate that the said witness had in fact issued the caste certificate. The same being one aspect of the matter, insofar as the caste certificate being claimed by respondent No.1 and even though a computer generated copy is relied on, the proceedings as noticed will disclose that in the circumstances where at an earlier point the request for caste certificate had been declined by a detailed order and the very nature in which the subsequent application is said to have been made and the proceedings thereto is sought to be relied on by respondent No.1, it would indicate that the evidence as noticed can only lead to the conclusion that no appropriate procedure known to law has been followed to order grant of caste certificate to respondent No.1 and in that view even if a certificate has been generated from the electronic records, the same is without appropriate basis and cannot be considered as a valid caste certificate.

61. Further, respondent No.1 though has relied on the documents at Exhs.R.41 to R.46 being the copies of the deposition of the witnesses and the communication of the DDPI relied on in the suit in O.S.No.107/2012 the same would not be of any assistance to respondent No.1 inasmuch as the suit has ultimately been dismissed and even though an observation is contained in the judgment thereto relating to the consideration of the caste certificate being made in the instant petition, the said witnesses have not been examined before this Court to speak about the caste status of respondent No.1. In fact while considering the matter on Issue No.4 raised herein it has been noted that except for the nature of the evidence tendered through the witnesses who had been examined, no reliable evidence to establish the caste of respondent No.1 to belong to *Budaga Jangama* has been tendered. From the very decision as relied on by the learned senior counsel for the petitioner in the case of ***Sobha Hymavathi Devi -vs- Setti Gangadhara Swamy and others [(2005) 2 SCC 244]*** - wherein it is

held that therefore in any view of the matter, it cannot be said that the High Court exercising the 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. At best, such certificate could be used in evidence and its evidentiary value will have to be assessed in the light of the other evidence let in, in an election petition. Therefore nothing turns on the factum of a certificate being issued by the authority concerned under the Act 1993. The Hon'ble Supreme Court was also satisfied in that case that no proper enquiry preceded the issuance of the certificate and such certificate was issued merely the say so of the appellant.

62. If that be the position, even though an attempt has been made by respondent No.1 in seeking to justify the caste certificate issued in his favour and when major discrepancies in the procedure is noticed

and also when under Issue No.4 the respondent No.1 had an opportunity to tender independent evidence before this Court to establish his caste status and he has failed to do so, the benefit of caste certificate sought to be relied on even if it was genuinely obtained would not be available to respondent No.1, more particularly in a circumstance where an earlier application had been rejected taking into consideration the entries in the school records relating to the caste of respondent No.1 and respondent No.1 having failed in the suit wherein he had sought for rectification of the entries in the school records. The said school documents being in the same position will continue to militate against the respondent No.1 and there being no other evidence available on record, no other conclusion could have been reached even if a subsequent application was filed by him seeking for issue of the caste certificate. In that view, the caste certificate as claimed to be relied upon by respondent No.1 would be of no consequence whatsoever.

63. Hence the issue Nos.2, 3 and 4 are accordingly answered holding that the caste certificate relied by the respondent No.1 is by playing fraud and as such the respondent No.1 was not qualified to contest the election from the constituency reserved for Schedule Caste. Hence the acceptance of the nomination of the respondent No.1 is illegal and has materially effected the election result.

64. Insofar as the other issues, though the learned senior counsel for the petitioner has relied on the decision in the case of ***Konappa Rudrappa Nadgouda vs. Vishwanath Reddy and another (AIR 1969 SC 447)***; ***Vishwanatha Reddy vs. Konappa Rudrappa Nadgouda (AIR 1969 SC 604)*** and ***Kammeng Dolo vs. Atumwelly [(2017) 7 SCC 512]*** to contend with regard to the manner in which the thrown away votes are to be transferred to the petitioner and declare the petitioner as elected and has also relied upon the evidence as tendered with regard to the pamphlets and the newspaper advertisements that had been issued, at this juncture I do not find it necessary

to advert to the details in that regard inasmuch as the term of the Legislative Assembly is to end shortly in about a month and the calendar of events for the election has already been announced.

65. Further though the learned senior counsel for the petitioner has referred to the decisions in the case of ***Harjit Singh Mann vs. Umrao Singh and others*** [(1980)1 SCC 713] and ***J.H.Patel vs. Subhan Khan*** [(1996)5 SCC 312], to contend that the respondent No.1 had not subscribed to the oath and the nomination form and in that regard has referred to the nomination form, while on the other hand the learned senior counsel has asserted that the oath has been subscribed to, the said aspect also does not arise at this juncture since even if the same was not raised as a issue nor pleaded, the said aspect was not put to the respondent at least when he was in the witness box, but has been raised only at the time of argument. In that view, I do not find it necessary to answer the said contention. Hence no specific orders are made on Issue No.7 and 8.

66. For the aforestated reasons, the following:

ORDER

- i) It is declared that the respondent No.1 belongs to Byragi caste.
- ii) It is further declared that the respondent No.1 has failed to establish that he belongs to Beda (Budaga) Jangama caste and as such the caste certificate dated 03.04.2012 relied upon is without the sanction of law.
- iii) The acceptance of the nomination of respondent No.1 and the consequent declaration as elected to Karnataka Assembly through certificate dated 08.05.2013 is declared illegal.
- iv) The petition is accordingly allowed in part with costs quantified at Rs.25,000/-.

**Sd/-
JUDGE**